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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 497

**A. M. ANDERSON, RECEIVER OF NATIONAL BANK
OF KENTUCKY, OF LOUISVILLE, PETITIONER,**

vs.

**KATHERINE KIRKPATRICK ABBOTT, ADMINIS-
TRATRIX WITH THE WILL ANNEXED OF THE
ESTATE OF DAVID J. ABBOTT, DECEASED,
ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT**

PETITION FOR CERTIORARI FILED OCTOBER 28, 1942.

CERTIORARI GRANTED DECEMBER 7, 1942.

IN THE
Supreme Court of the United States

October Term, 1942

No. 497

A. M. ANDERSON, Receiver of the National Bank of
Kentucky,

v.

Petitioner,

KATHERINE KIRKPATRICK ABBOTT, Administra-
trix of the Estate of David J. Abbott, deceased, et al.,
Respondents.

Transcript of Record

On Petition for Writ of Certiorari to the United States
Circuit Court of Appeals for the Sixth Circuit

VOLUME I

ROBERT S. MARX,
FRANK E. WOOD,
NICHOLS, WOOD, MARX & GINTER,
Cincinnati, Ohio,

ALFRED C. KRIEGER,
Louisville, Ky.,

Attorneys for Petitioner.

LAFON ALLEN,
W. W. CRAWFORD,
ALLEN P. DODD,
Louisville, Ky.,

Attorneys for Respondents.

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District Court of the United States

A. M. ANDERSON, Receiver of the National Bank of
Kentucky,

Appellant,

v.

KATHERINE KIRKPATRICK ABBOTT, Administra-
trix of the Estate of David J. Abbott, deceased.*

Appellees.

B1, Katherine Kirkpatrick Abbott, Administratrix of
David J. Abbott, deceased. B2, Mrs. Carrie Harting Abell.
B3, J. Fort Abell. B4, Albert M. Able. B5, Louis Abra-
ham. B6, Louis J. Ackley. B7, James W. Adams. B8,
Miss Sarah Byrd Adams. B9, Walter T. Adams. B10,
Chester F. Adamson. B11, Moses W. Ades. B12, Simon
Ades. B13, Miss Agnes L. Adolph. B14, Anna G. Adolph
Wilhoite. B15, Ernest C. Adolph. B16, Miss Mary
Adolph. B17, William J. Adolph. B18, Mrs. Mollie Ah-
rens. B19, Maud Ainslie. B20, Frank P. Allen. B21, J.
W. Allen, Jr. B22, Mrs. Mary Warfield Allen. B23, Vic-
tor W. Allen. B24, William Allen. B25, William B. Allen.
B26, William D. Allen. B27, William H. Allen. B28, Frank
N. Allgeier. A29, Arthur H. Almstedt; A30, Fred L. Alm-

* Appellees whose names are preceded by the letter "B" were defendants named in the original Bill of Complaint, or are personal representatives of such defendants against whom this cause has been revived. Appellees whose names are preceded by the letter "A" were defendants named in one of the amendments to the original Bill of Complaint or are personal representatives against whom this cause has been revived.

stedt; A31, Richard H. Almstedt; A32, William C. Almstedt, Partners doing business under the firm name and style of Almstedt.Bros. A33, Fred L. Almstedt; A34, Arthur H. Almstedt, Executors of the Estate of Henry Almstedt, deceased. A35, Liberty National Bank & Trust Company, Trustee of the Estate of Henry Almstedt, deceased. B36, Montgomery Merritt Alves. B37, Julius Ambrosius. B 38, Robert Ambrosius. A39, Mollie B. Ament, Executrix of the will of Allen Ament, deceased. B40, Mrs. Mary B. Ament. B41, Nolte C. Ament. A42, Kentucky Title Trust Company, Trustee for Amelia W. Anderson. A43, Emma W. Anderson, Executrix of Estate of Mrs. Amelia W. Anderson. A44, Emma W. Anderson, Distributee. A45, Lucinda A. Morris, Distributee. B46, Miss Evelyn L. Anderson. B47, Miss Liny C. Anderson. B48, Miss S. Tanner Anderson. B49, W. Sherman Anderson. B50, Warren L. Anderson.

B51, Ida S. Andresen. B52, Adolph W. Andriott. B53, Miss Lillian Andriott. B54, Mrs. Amelia B. Angermeier. B55, Robert R. Appel. B56, Mr. Robert L. Armes. B57, Pauline Nichols (nee Armes) Executrix of the will of Samuel H. Armes, deceased. B58, Mrs. Blanche Armstrong. B59, George Armstrong. B60, Louis Armstrong. B61, Ruth E. Armstrong, Executrix of the Estate of William F. Armstrong, deceased. B62, Ben Arnold. B63, Miss Bertha Arnold. B64, Calvin G. Arnold. B65, Miss Cornelia E. Arnold. B66, B. H. Arterburn; B67, G. T. Dick, Executors of the Estate of Norborn Arterburn, deceased. B68, Fritz C. Askenstedt. A69, Bernard Asman. B70, Lincoln Bank & Trust Company, Administrator with the will annexed of the Estate of William Astroth, deceased. B71, Minnie W. Atchison. B72, Miss Beulah E. Atkins. B73, William R. Atkins. B74, Miss Annabell Augustus. B75, Addie Austin. B76, Mrs. Goldie M. Awty. B77, Edwin D. Axton. A77, Edwin D. Axton, Distributee. A78, R. L. Axton, Dis-

tributee. A79, Edwin D. Axton; A80, R. L. Axton, Executors of the Estate of Wood F. Axton, deceased. A81, Edwin D. Axton; A82, R. L. Axton; A83, Fidelity & Columbia Trust Co., Agents Estate of Wood F. Axton. B84, Mrs. Juliet B. Ayers. B85, Frank B. Ayers. B86, Charles G. Bacigalupi. B87, Francis A. Bade. B88, Mrs. Marion L. Bade. B89, Mrs. Elise M. Bader. B90, Otto J. Bader. B91, Mrs. Elizabeth H. Badger. B92, David W. Baird. B93, Mrs. Eleanor D. Baird. A94, Saida B. Weaver. A95, Edna S. Baird. B96, Miss Addie C. Baker. B97, Pled P. Baker. B98, Mrs. Minnie L. Baldauf. B99, Henry Baldwin. B100, Carlton Ball.

B101, Clarence E. Ball. B102, United States Trust Company, Executor of the will of Sunshine H. Ballard, deceased. B103, Wilfred C. Bamber. B104, Miss Eva B. Bandman. B105, Chester J. Banes. B106, Rose M. Bannon. B107, Rodman Thurman Barber. B108, S. Lyman Barber. B109, Miss Caroline F. Barbour. B110, Catherine A. Barbour. B111, Mrs. Elizabeth Akin Barbour. B112, Philip F. Barbour. B113, Miss Pattie R. Barfield. B114, Mrs. Ellanora R. Barker. B115, Thomas A. Barker. B116, Mrs. Lilly S. Barkhouse. A117, Fidelity & Columbia Trust Company; A118, Joseph Selligman, Trustees for Nellie B. Clam (Calm), Distributee. A119, Fidelity & Columbia Trust Company; A120, Joseph Selligman, Trustees for Marie B. Moses, Distributee. A121, Caroline C. Barnes, Executrix of the Estate of Claude R. Barnes, deceased. A122, Caroline C. Barnes, Distributee. B123, Jacob Baron. B124, Minnie A. Baron. B125, Jacob Baron. A126, William J. Baron. B127, Mrs. Chamie W. Barr. B128, Frank W. Barr. B129, John W. Barr, Jr. B130, Mrs. Ellen R. Barrett. B131, James R. Barrett. B132, Mrs. Sue C. Barret. B133, Fidelity & Columbia Trust Company, Administrator with the will annexed of the Estate of Thomas L. Barrett, deceased. B134, Thomas H. Barringer. B135, John J.

Barry. B136, Mrs. Adeline Barth. B137, Miss Ellen C. Bartley. B138, George C. Bartman. A139, Kentucky Title Trust Company, Executor of the Estate of Henrietta W. Barton, deceased. A140, Kentucky Title Trust Company, Executor of the Estate of Charles P. Barton, deceased. B141, Mrs. Effie S. Basham. B142, Albert L. Bass. B143, Russell M. Bass. B144, Mrs. Lora Lee Bates Gibbs. B145, Rudolph H. Baude. B146, Bertha J. Bauer Kenealy. B147, Charles Baumgarten, Jr. B148, Harry E. Baumgarten. B149, Miss Margaret L. Baumgarten. B150, Mrs. Marie Baumgarten.

B151, Miss Mary V. Baumgarten. B152, Charles S. Baxter. B153, Edward J. Bayens. B154, Frank E. Bayens. B155, Miss Freda J. Bayens. B156, Miss Mary Bayens. B157, Raphael J. Bayens. B158, Kenneth Bayers. B159, Ethel N. Bayless. B160, Mrs. Sue S. Bayly. B161, Mrs. Alice M. Beattie. B162, Mark Beauchamp, Trustee, Jane C: Beauchamp. B163, Mark Beauchamp, Trustee, Mark Beauchamp, II. B164, Albert M. Beck. B165, Miss Anna Beck. B166, Mrs. Anna Fillion Beck. B167, Miss Emma T. Beck. B168, Gustav F. Beck. B169, Charles L. Becker. B170, Florence H. Becker. B171, Miss Gertrude Becker. B172, John Becker. B173, Mrs. Alice Beckham. B174, Lincoln Bank & Trust Company, Administrator with the will annexed of the Estate of J. Crepps Wickliffe Beckham, deceased. B175, Mrs. Nancy I. Beckley. B176, Richard Beckley. B177, Mrs. Beatrice F. Beeler. B178, J. Argyle Beeler. B179, Argyle J. Beeler, Guardian for Barbara Beeler. B180, Miss Clara L. Behrens. B181, Miss Katherine S. Behrens. B182, Miss Nora P. Behrens. A183, Joe Belker, Distributee. A184, Joe Belker; A185, Louis Shatz, Administrators of the Estate of Mrs. Rebecca Belker, deceased. B186, Junius W. Bell. B187, Lexis K. Bell. B188, Miss Ida M. Belle. A189, Mary A. Bellman, Administratrix with the will annexed of the Estate of John H. Bell.

man, deceased. A190, Mary A. Bellman, Distributee. B191, Richard C. Belshoff. B192, Miss Nina Benedict. B193, John C. Bennett. B194, Lasser Benovitz. B195, David Benovitz. A196, Blanche A. Bensinger; A197, J. Marshall Bensinger, Administrators of the Estate of Arthur B. Bensinger, deceased. B198, Thekla Berg. B199, Louis J. Bergenroth. B200, Mrs. Dora Berger.

B201, Peter C. Berger. B202, Peter Charles Berger. B203, Dennis Berman. B204, Mrs. Laura Berner. B205, Oscar W. Berner. B206, Frank D. Bernheim. B207, Franklin D. Berry. A208, The Louisville Trust Company, Administrator of the Estate of Mary McDonald Sherrill. B209, Miss Flora A. Betz. B210, Mrs. Georgia Beyer. B211, William F. Bierbaum. B212, Carroll C. Bigley. B213, James W. Bigley. A214, Lincoln Bank & Trust Company, Executor of the Estate of Mai Hill Bartlett, deceased. A215, Lillian Wabnitz Bills, Executrix of the Estate of Clifford P. Bills, deceased. B216, Ruth D. Birkel Fritsch. B217, John A. Bischof. B218, Miss Anna Bischoff. B219, Frieda Gudex, Administratrix of the Estate of Emily E. Bischoff, deceased. B220, Louis L. Bischoff. B221, Miss Margaret Bischoff. B222, Mrs. Carrie Bishop. B223, Kate Moore, Administratrix of the Estate of Joseph T. Bishop, deceased. B224, Mrs. Alice M. Bittner Eirk. B225, Mrs. Emma Bittner. B226, Miss Martha M. Bittner. B227, Mrs. Ruth D. Bittner Schneider. B228, William C. Bittner. B229, Mrs. Ethel Bitzer. B230, Mrs. Frances Bitzer. B231, Ray Bizot. B232, Mrs. Florence M. Black. A233, Charles W. Hibbitt, Executor of the Estate of Blanche H. Blake, deceased. A-B234, Charles A. Blake. B235, Elmer P. Blankenbaker. B236, John A. Blau. B237, Dr. Oscar E. Bloch. B238, John Herman Block. B239, Leo Block. B240, William M. Block. B241, Miss Agnes Bloemer. B242, Miss Lillian Bloemer. B243, Miss Lula M. Bloemer. B244, Miss Matilda Bloemer. B245, Miss Mayme Bloemer.

B246, Emanuel L. Bloom. B247, Mrs. Emma E. Blumer. B248, Milton Board. B249, Robert V. Board. B250, Mrs. Sarah M. Board.

B251, Neal B. Boblitt. B252, Charles Bobzien. B253, Clarence J. Bodemer. B254, Mrs. Louise F. Boden. B255, Mrs. Lucile A. Boden. B256, Samuel D. Boden. B257, Temple Bodley. B258, Herbert F. Boehl. B259, Mrs. Florence R. Bohlson. B260, Alvin P. Bohmer. B261, Alvin P. Bohmer, Executor of the will of Charles H. Bohmer, deceased. B262, Henry Bohmer. B263, Miss Christine Bohon. B264, Thomas A. Bohon. B265, Louis P. Bohrman. B266, Clyde M. Bolt. B267, Bodley Booker. B268, W. Fred Booker. B269, George O. Boomer. B270, Boone Lodge, I. O. O. F. B271, Percy N. Booth. B272, David Bordorf. B273, Miss Angela J. Borgman. B274, Mrs. Marie A. Bornwasser. B275, Abraham Borowitz. B276, Mrs. Anna E. Bosler. B277, John N. Bosler. B278, Richard E. Bosler. B279, Miss Florence A. Bossmeyer. B280, Robert D. Bottomley. B281, Mrs. Mamie Morris Boulware. B282, John C. Bourne. B283, Mrs. Leora B. Bower. B284, Benton B. Bower. B285, James L. Bowie, Jr. B286, Miss Lotta H. Bowling. B287, Thomas W. Bowmer. B288, Berl Boyd. B289, Miss Alma Brabandt. B290, Mrs. Tillie Bertha Bradley. B291, Tillie Bertha Bradley, Executrix of the will of Thomas P. Bradley, deceased. B292, Nancy R. Bradsby, Executrix of the will of Frank W. Bradsby, deceased. B293, Eugene W. Braitling. B294, G. A. Brakmeier; B295, Gus W. Brakmeier, Jr., Partners trading and doing business as Brakmeier Bros. B296, Mrs. Ida M. Brakmeier. B297, Mrs. Elsie Harvey Brandeis. A298, United States Trust Company, Executor of the Estate of Gertrude A. Braun, deceased. B299, Miss Anna L. Breathitt. B300, Charles P. Brecher.

B301, Miss Elizabeth Breckinridge. B302, Lawrence W. Breed. B303, Miss Mary K. Breed. B304, Miss Persis M.

Breed. B305, Mrs. Lockie J. Breeding. B306, William M. Breidenthal. B307, Mrs. Minnie M. Brenckmann. B308, J. Arvid Brennan. B309, Mrs. Elizabeth B. Brewer. B310, Miss Annie G. Bridges. B311, Miss Elizabeth Bridges. B312, Miss Emma T. Bridges. A313, Fidelity & Columbia Trust Company, Executor of the Estate of Harry Bridges, deceased. A314, Bell Gordon Krebs, Distributee. A315, Annie Elizabeth Bridges, Distributee. A316, Fidelity & Columbia Trust Company, Trustee for Eleanor Bridges Sanders, Distributee. B317, George G. Bright. B318, Mrs. Claude C. Briney. B319, Mrs. Bonnie B. Bristow. A320, Fidelity & Columbia Trust Co., Trustee u/w of Eliza S. Broadus for Caroline Broadus. A321, Fidelity & Columbia Trust Co., Trustee u/w of Eliza S. Broadus for Annie Harwood Abraham. A322, Fidelity & Columbia Trust Co., Trustee u/w of Eliza S. Broadus for Lida Somerville Wilkinson. A323, A. T. Robertson, Executor of the Estate of Eliza S. Broadus. B324, Andrew Jas. Brodie. B325, John G. Brodie. A326, Robert Brodie, Distributee. A327, A. J. Brodie, Distributee. A328, J. G. Brodie, Distributee. A & B329, Reed Brodie, Distributee. A330, Reed Brodie, Executor of the Estate of Margaret Brodie, Deceased. A331, Janet Brodie Frank, Distributee. A332, Janet Brodie Hudson, Distributee. A333, Mary Brodie Hodge, Distributee. B334, Robert Brodie. B335, Miss Susie E. Brooke. B336, Harry King Brooking. B337, Mrs. Margaret S. Brooking. B338, Miss Corine V. Browinski. B339, R. V. Browinski. B340, Arthur W. Brown. B341, Claud Brown. A342, Adelaide Brown Snyder, Executrix of the estate of Frank H. Brown, deceased. A343, Adelaide Brown Snyder, Distributee. B344, George Brown. B345, Harry J. Brown. B346, Harry M. Brown. B347, J. Graham Brown. A348, James J. Brown, Jr. B349, Mrs. Jennie T. Brown. B350, Miss Margaret E. Brown.

B351, Mrs. Mary K. Brown. B352, William Brown.
 B353, William E. Brown. B354, Charles Brownstein.
 B355, Miss Elizabeth B. Bruce. B356, James W. Bruce.
 B357, Mrs. Sallie W. Bruce. B358, Charles J. Bruck.
 B359, Phillip Brueback. B360, Mrs. Anna Brumbaugh.
 B & A361, Mrs. Helen Floyd Bryan. A362, Hildagarde
 Ebernz. B363, Volney H. Bryan. B364, Miss Elizabeth
 Buchanan. A365, James N. Buck. B366, Hu. Kennedy Bul-
 litt. B367, Hugh K. Bullitt, Tr. C. M. Bullitt, H. H. Bullitt
 and A. S. Bullitt. B368, Thomas B. Bullitt. B369, Francis
 M. Burch. B370, Henry L. Burch. B371, Roland B. Burch.
 B372, Edward W. Burdue. B373, John E. Burgan. A374,
 Edward S. Burge. B375, Joseph E. Burghard. A376, Mrs.
 Estella Burke. B377, Mrs. Marie M. Burke. B378, Mrs.
 Nancy H. Burke. B379, Miss Sallie Burke. B380, James
 R. Burkholder, Jr. B381, Thomas E. Burkholder. B382,
 William H. Burkholder. B383, A. Roy Burke. B384,
 George R. Burke. B385, Miss Edith M. Burn. B386, Lee
 H. Burns. A387-8, Minor C. Brooks and Neill S. Brooks,
 Executors of the will of Mrs. Mary M. Burton, deceased.
 B389, Mrs. Alice Davies Butler. A390, Thomas Langford
 Butler, Distributee and Executor of the Estate of Mrs.
 Fanny S. Butler, deceased. B391, Miss Maude Butler.
 B392, Fidelity & Columbia Trust Co., Executor of the will
 of Thomas L. Butler, deceased. A393, Miss Julia Buttimer.
 B394, Miss Corinne Byrne. B395, Walter Byrne. B396,
 John H. Cahill. B397, Nathan H. Cahn. B398, Callahan
 & Sons. B399, Miss Alberta Callahan. B400, Miss Frances
 L. Calveard.
 B401, Samuel R. Calveard. A402-3, Emma D. Campbell
 and Louisville Trust Company, Executors of the Estate
 of Charles D. Campbell, deceased. B404, Mrs. Ella Brooks
 Campbell. B405, J. Wheeler Campbell. B406, Mrs. Vir-
 ginia B. M. Campbell. B407, Mrs. Cecilia B. Cardwell.
 B408, Marion H. Cardwell. B409, H. St. George Tucker

Carmichael. B410, L. Sheldon Caron. B411, L. Sheldon Caron, Executor of the will of Sara Leight Caron, deceased. B412, Mrs. Lou A. Carpenter, for credit to a/c The Louisville Trust Company. B413, Miss M. Blanche Carr. B414, Anthony J. Carroll. B415, Anthony J. Carroll, Tr. B416, Tarlton C. Carroll. B417, Alexander M. Carson. B418, John M. Carson. B419, Allen R. Carter. B420, James G. Carter. A421, James Garland Carter, Executor of the estate of Mrs. Lou Ella Carter, deceased. B422, Roy L. Carter. A423, Lois C. Schauer, Administratrix of the estate of Susan O. Carter, deceased. A424, Stephen O. Carter, Distributee. B425, Mrs. Barbara R. Caspari. B426-7, Marvin Catlett and Anna Catlett. B428, Mrs. Eva B. Cawthon. B429, Miss Mary Gale Cawthon. B430, Harry P. Chamberlain. B431, Mrs. Mary Ellen Chandler. B432, Miss Mary Ellen Chandler. B433, Mrs. Ernestine W. Charlton. B434, Henry L. Charlton. B435, Arlie Chastain. B436, Mrs. Nellie M. Chawk. B437, William J. Chawk. B438, John W. Check. B439, Christopher C. Childers. B440, Mrs. Allen M. Choate. B441, Miss Frieda Christen. B442, Gus A. Christen. B443, City Bank & Trust Co., Trustee John P. Garnett Estate. B444, Mrs. Ray M. Claggett. A445, James Tranter Clark, Executor of the estate of Mrs. Ada T. Clark, deceased. A446, Kentucky Title Trust Co., Assignee of George M. Clark. B447, Mrs. Inda Helm Clark. A448, Lula Grover Clark, Executrix of the will of Morris C. Clark, deceased. B449, Walter S. Clark. A450, Lenora D. Clark, Executrix of the Estate of William K. Clark, deceased.

A451, Lenora D. Clark, Distributee. A452, Louisville Trust Company, Executor of the Estate of Mrs. Mattie A. Clark, deceased. A453, Louisville Trust Company, Trustee for Eugenia Love. A454, Louisville Trust Company, Trustee for Mrs. Mollie Gamble. A455, Eugenia Love. B456, Miss Harriet A. Clay. B457, Fred A. Clegg. B458, Mrs.

Margaret A. Clem. B459, John S. Clemons. A460, Blanche Clerget, Administratrix of the Estate of Augustina C. Clerget. B461, Stanton Z. Clore. B462, Mrs. Annie E. Cloud. B463, Louis D. Coady. B464, Miss Mary K. Coady. B465, T. Wilson Cochran. B466, Dudley B. Cocke. B467, Mrs. Sallie Cocke. B468, Wilbur B. Cogshall. B469, Armand E. Cohen. B470, Bernard Cohen. B471, Dan Cohen. B472, Harry N. Cohen. B473, Rufus R. Cohen. B474, Simon Cohen. B475, Adolph Cohn. B476, Joseph H. Cohn. B477, Maurice S. Cohn. B478, Monte G. Cohn. B479, Andrew E. Jack Cole. B480, Lewis W. Cole. B481, Mrs. Eliza R. Coleman. B482, Mrs. Lily Z. Coleman. B483, Mrs. Ruth Scott Coleman. B484, Thomas C. Coleman, Jr. A485, Kentucky Title Trust Company, Administrator of the Estate of Hilton Collins, deceased. A486, Grace G. Talbott, Distributtee. A487, Mrs. Samantha Collins, Distributtee. A488, W. H. Giltner, Distributtee. B489, Miss Mary R. Collins. B490, Veasy T. Collins. B491, Caroline G. Collis. B492, Mrs. Harriet C. Collis. B493, John V. Collis. B494, Mark Collis. B495, Mary G. Collis. B496, Harry H. Combs. B497, Mrs. Carrie Conen. B498, Miss Sue G. Connaughton. B499, Mrs. Annie Connelly. B500, J. Joseph Connelly.

B501, Miss Adelia L. Conrad. B502, Adelia L. Conrad. B503, Mrs. Louise Conrad. B504, Miss Ricka Hartmetz. B505, Mrs. Tillie Conrad. B506, Mrs. Emma H. Coogle. B507, Edwin G. Cooke. B508, Cooks Benevolent Institute. B509, Miss Hallie L. Coombs. B510, Mrs. Lillie F. Coombs. B511, Clifford T. Coomes. B512, Alberta M. Coomes. B513, S. W. Coons. B514, Samuel W. Coons. B515, Mrs. Anna May Petrey Cooper. B516, Mrs. Mary O. Cooper. B517, James R. Corbett. A518, Marian W. Corcoran, Executrix of the Estate of Andrew J. Corcoran, deceased. A519, Marian W. Corcoran, Distributtee. B520, Mrs. Mariam W. Corcoran. A521, Nettie E. Cornell, Ex-

ecutrix of the Estate of Burton Cornell, deceased. A522, Nettie E. Cornell, Distributee. B522, Mrs. Nettie E. Cornell. B523, Miss Mae Cornwell. B524, Mrs. Elizabeth Corrington. B525, Francis R. Cotton. B526, Courier-Journal Job Printing Co. B527, Mrs. Pearl C. Covington. B528, Annette B. Cowles. A529, Fidelity & Columbia Trust Company, Executor of the Estate of Attila Cox, deceased. B530, Mrs. Carrie G. Cox. B531, Robert R. Cox. B532, John W. Craddock. A533, Lincoln Bank & Trust Company, as Executor of the Estate of Wood Crady, deceased. B534, Herbert C. Cralle. B535, Herbert C. Cralle, Jr. A536-7, Lee E. Cralle, Jr., and Louisville Trust Company, Executors of the Estate of Lee E. Cralle, deceased. B538, Lee E. Cralle, Jr. B539, Mrs. Mary E. Cralle. A540, Kentucky Title Trust Company, Executor of the Estate of Matt H. Crawford, deceased. A541, Kentucky Title Trust Company, Trustee of Estate of Matt H. Crawford, Trustee of Mary W. Crawford. A542, Mary W. Crawford. B543, James M. Crews. B544, Miss Charlotte F. Cromie. B545, Miss Amelia Grovo. B546, Albert B. Crush. A547, Josephine M. Crush, Executrix of the Estate of Florian A. Crush, deceased. A548, Josephine M. Crush, Distributee. B548, Mrs. Josephine L. Crush. A549, T. M. Crutcher. B550, T. M. Crutcher Dental Depot.

B551, Charles C. Culp. B552, Miss Margaret Cummins. B553, Miss Mary Cummins. B554, Mrs. Lizzie P. Cumnock. B555, Mrs. Sallie J. Cuneo. B556, L. Thurman Cunningham. B557, Mamie M. Curd. B558, Nat C. Cureton. B559, Arch H. Curran. B560, Miss Julia Curran. B561, Mrs. Rose J. Currie. B562, Lee Curry. B563, Lee Roy Curtis. B564, Miss Nettie Dahlen. B565, Mrs. Agnes H. Danhauer. A566-7, Lela H. Daniell, Distributee and Administratrix w/a of the estate of John P. Daniell, deceased. A568, Mae Daniel Warren, Distributee. B569, John P. Dant, Sr. B570, Joseph B. Dant. B571, Miss

Katie R. Dant. B572, Miss Louise Dant. B573, Raymond J. Daub. B574, Mrs. Ewing F. Daugherty. B575, Morris W. Davidson. A576, Kentucky Title Trust Company, Administrator of the Estate of Mrs. Addie O. Davis, deceased. B577, Mrs. Annie Davis. B578, Miss Ellen McD. Davis. B579, Mrs. Ellen McD. Davis. B580, Harry V. Davis. B581, Harry V. Davis, Sr. B582, John J. Davis. B583, Miss Margaret C. Davis. A584, Murray Davis. B585, Mrs. William Y. Davis. B586, Joseph M. Dawson. B587, Mrs. Cary Fink Deangulo. A588, Miss Ethel Degraw. B589, Jess D. Degraw. B590, Claude E. Dehart. B591, Mrs. Katie E. Dehler. B592, Mrs. Anna Deibel. B593, Esther Barth, Executrix of the will of Miss Elizabeth Deibel, deceased. A594, William F. Deiss. B595, DeMolay Commandery No. 12 Knight Templar. B596, William H. Dennes. A597, Cecelia A. Dennes, Executrix of the Estate of William H. Dennes. B598, Mrs. H. Edna Denson. A599, Mrs. Pearl Denson. B600, Claude M. Denton.

B601, Ida Mae Denzinger, Executrix of the will of John J. Denzinger, deceased. B602, Philip Weinberg, Executor of the will of Theodore J. Desse, deceased. A603, William L. Desse. A604, Liberty National Bank & Trust Company, Trustee u/w of Louise S. Detchen. B605, Miss Mayme Deuser. B606, Brents Dickinson. B607, Miss Agnes Dickson. B608, Mrs. Elgie Diebold. B609, Otto K. Dietrich. B610, Richard P. Dietzman. A611, Helen W. Dimmitt, Distributee. A612, Helen W. Dimmitt, Executrix of the Estate of Addison Dimmitt, deceased. B613, William H. Dinklacher. B614, Mrs. Marie W. Ditto. B615, Gaines S. Dobbins. B616, Allen P. Dodd. B617, Allen Dodd, Jr. B618, Kate C. Dodd, Administratrix w/a of the Estate of Charles Pearce Dodd, deceased. B619, Edward A. Dodd. B620, John L. Dodd. B621, Mrs. Bettie H. Dodge. B622, Miss Mary Lee Dodge. B623, Sidney E. Dodge. B624, Mrs. Josephine Doerting. B625, Walter J. Doerting. A626,

Miss Elizabeth G. Doherty. B627, William B. Doherty. B628, Mrs. Priscilla W. Dohoney. B629, Mrs. Katherine E. Dohrmann. A630, Miss Clarissa Doll. B631, Edward C. Doll. B632, Mrs. Ivy A. Doll. B633, Miss Grace Doncaster. B634, James Cardwell Dorman. B635, Mrs. Amelia E. Dorn. B636, Rudolph J. Dorn. B637, Mrs. Mary Dorsey. B638, Nat F. Dortch. B639, William T. Dotson. B640, Frank J. Dougherty. B641, Mrs. Helen J. Dravo. B642, Miss Sarah A. Dreher. B643, Mrs. Hortense Weis Dryfus. B644, Isidor Dreyfus. B645, William Drysdale. B646, Mrs. Margaret Strain Duane. B647, Frank C. Ducker. B648, Edward G. Duckwall. A649, United States Trust Company, Executor of the Estate of Ben J. Dudley, deceased. A650, John M. Scott, Executor of the Estate of Burton A. Duerson, deceased.

B651, Virgil O. Duffin. B652, James T. Duffy. A653, Miss Jennie A. Duffy. A654, Miss Margaret Duffy. A655, Martin J. Duffy. A656, Martin J. Duffy, Jr. B657, Frank I. Dugan. B658, Roy Duggins. B659, Andrew W. Duncan. B660, Mrs. Anna L. Duncan. A661, Miss Anne Stuart Duncan. B662, Miss Dorsey Duncan. B663, Miss Lucie M. Duncan. B664, Scott Duncan, Sr. B665, Scott Duncan, Sr., and Elizabeth S. Duncan, Executors of the will of Tom B. Duncan, deceased. B666, William G. Duncan, Jr. A667, N. W. Clarke; A668, A. P. Bohmer, Partners doing business under the firm name and style of John L. Dunlap & Co. A669, Miss Augusta Dunn. A670, Mrs. Ida M. Dunn. B671, Joseph H. Durham. B672, Richard A. Durham. B673, Mrs. Mollie M. Dusch. B674, Johanna Lampton. B675, Frank P. Duttlinger. B676, Mrs. Bethel H. Dycus. A677, Frank H. Dyer. B678, Robert L. Eads. B679, George M. Eady. B680, Charles W. Eaken. B681, Miss Anna L. Eames. A682, Alice Stone Eastwood, Distributee. A683, Harry W. Eastwood, Distributee. B684, Miss Catherine Eberlein. A685, Erwin G. Eberlein, Executor of the

Estate of Orien C. Eberlein, deceased. A686, Marie Eberlein. B687, Elmore J. Eckerle. B688, Claude S. Eddleman. A689, W. S. Hodgens, Executor of the Estate of Mrs. Belle J. Edelen, deceased. B690, Collins J. Edelen. B691, George L. Edelen. B692, Luvena E. Edelen. B693, Edward C. Edinger. B694, Cleland J. Edmonds. B695, Ernest C. Edmonds. B696, Mrs. Verna D. Edsall. B697, Bessie Byrne Edwards. B698, Davis W. Edwards. B699, Grover M. Edwards. B700, Retta S. Eggen, Executrix of the will of Arch M. Eggen, deceased.

B701, Mrs. Settie C. Ehrmann. B702, George Eichhorn. B703, Mary B. Eichhorn. A704, George E. Eichhorn, Administrator w/a of the Estate of Mrs. Mary B. Eichhorn, deceased. A705, Mrs. Catherine M. Eifler. B706, Charles H. Eifler. B707, Louisville Trust Company, Executor of the will of Charles H. Eifler, deceased. A708, John Eifler. A709, John B. Eifler. A710, Miss Mary O. Eldredge. B711, Theodore Eline. B712, Ray L. Ellars. B713, Thomas H. Elliott. B714, Mrs. Stanley H. Ellis. B715, Jacob M. Englert. B716, John G. Epping. A717, George Ernst. A718, George T. Ernst. A719, Mary E. Ernst. A720, Rose Shuter Escott, Guardian Frances Escott. B721, James J. Etheridge. B722, Charles S. Evans. B723, Mrs. Flora Annette Evans. A724, Louisville Trust Company, Administrator of the Estate of George L. Everbach, deceased. B725, Gerald L. Everbach. B726, Joseph B. Everhart. B727, Charles Ewing. B728, C. O. Ewing, II. B729, Charles O. Ewing, II. B730, Forest Ewing. B731, Tilford A. Ewing, Jr. B732, Mrs. Julia R. Fahey. B733, William B. Fahey. B734, William E. Fahey. A735, Miss Mary Fallon. B736, Family Credit Clothing Co., Inc. A737, Maria Eaton Farmer, Executrix of the Estate of Edward C. Farmer, deceased. B738, Eugene F. Farmer. B739, Mrs. Maria Farmer. B740, Alex T. Farnsley. B741, Miss Edith Farnsworth. A742, William D. Farrell. B743, Alden

L. Fawcett. B744, Lida S. Fawcett. A744, Lida S. Fawcett. B745, Fred Fedler. B746, Miss Norma K. Fegenbush. A747, Milton Feiler, Administrator of the Estate of Harry Feiler, deceased. B748, Milton E. Feiler. B749, Irvin Feldbaum. B750, Rudolph J. Felhoelter.

B751, Catherine Felhoelter. B752, Miss Eva Felsenthal. B753, Miss Annette H. Fenley. B & A754, Mary J. F. Kaye, Executrix of the will of Mary W. Fenley, deceased. A755, L. G. Kaye, Trustee of the Estate of Oscar Fenley, deceased. A756, John Marshall, Jr., Trustee of the Estate of Oscar Fenley, deceased. B757, George G. Fetter, Jr. B758, Fidelity & Columbia Trust Co. B759, Fidelity & Columbia Trust Co., Guardian of Clara Allen. B760, Fidelity & Columbia Trust Co., Guardian of Frances Allen. B761, Fidelity & Columbia Trust Co., Guardian for Katherine Allen. B762, Fidelity & Columbia Trust Co., Trustee for D. Barclay, Jr., et al. A763, D. Barclay, Jr. B764, Fidelity & Columbia Trust Co., Agent for Cary F. Baynes. B765, Fidelity & Columbia Trust Co., Agent for Morris B. Belknap. A766, Morris B. Belknap. A767, Walter K. Belknap. A768, Alvin H. Bornswasser. A769, Adolph T. Bradley. B770, Fidelity & Columbia Trust Co., Trustee for Church Home for Females and Infirm. B771, Fidelity & Columbia Trust Co., Trustee for Francis T. Cole. A772, Eliza R. Coleman. B773, Fidelity & Columbia Trust Co., Agent for Hannah B. Forman. B774, Fidelity & Columbia Trust Co., Agent for Ethel Allen Gage. A775, Fidelity & Columbia Trust Co., Agent for Irene H. Gathright. A776, Irene H. Gathright, Trustee for James R. Marshall. A777, Carrie G. Cox, Distributee. B778, Fidelity & Columbia Trust Co., Agent for Mary Potter Leigh. B779, Fidelity & Columbia Trust Co., Agent for Alfa Wakefield Martin. A780, Martha Messick. A781, Ferda Zorn Moren. B782, Fidelity & Columbia Trust Co., Trustee for Orphanage of Good Shepherd. B783, Fidelity & Columbia Trust Co.,

Agent for Fannie G. Rankin. A784, Fannie G. Rankin. A785, Fidelity & Columbia Trust Co., Agent for Anna C. Stewart. B786, Fidelity & Columbia Trust Co., Trustee for John D. Taggart. B787, Fidelity & Columbia Trust Co., Trustee for Eugene A. Taylor. A788, Fidelity & Columbia Trust Co., Agent for Mrs. Annie C. Thompson. A789, Frances P. Newman. A790, Mary P. Starks. A791, Fidelity & Columbia Trust Co., Agent for Edna B. Uphaus. A792, Carolyn Verhoeff. A793, Mary Verhoeff. A794, Fidelity & Columbia Trust Co., Trustee for Mary J. Verhoeff. A795, Edna Haupt Vogt. A796, Viola B. Von Siebenthal. B797, Fidelity & Columbia Trust Co., Trustee, Mary Lee Warren, et al. A798, Ethel R. Wood. A799, Fidelity & Columbia Trust Co., Agent for Henri Fink Zinno. B800, Mrs. Lizzie Field.
 A801, Fidelity & Columbia Trust Co., Agent (Executor) Edward L. Warren. B802, Miss Mattie Field. B803, Emmet R. Field, Administrator w/a of the estate of Sue F. Field, deceased. B804, William H. Field. B805, John J. Fields. A806-7, Rosa R. Finck, Executrix and Distributtee of the Estate of C. Rufer Finck. B808, Marcus Fine. B809, Mrs. Duck M. Fink. B810, Arthur W. Finley. A811, Miss Jessie Finney. A812, Miss Mary F. Finney. A813, Miss Pansy E. Finney. B814, Richard T. Finney. B815, Mrs. Charlotte P. Finzer. B816, First National Bank, Mayfield, Ky., Tr. for Mrs. Sue Newman Schoe. A817, Mrs. Mollie C. Fisher. B818, Thomas C. Fisher. A819, Mrs. Elizabeth S. Fiske. A820, Miss Ruth E. Fiske. B821, Simon Fitzpatrick. B822, Mrs. Margaret Fix. B823, Daniel J. Flanagan. B824, Arthur Fleischaker. A825, Miss Edna Mae Fleishher. B826, Minnie Fleischaker. B827, Albert W. Fleischmann. B828, Mrs. Milta B. Fleming. B829, Gustav Flexner. B830, Emily Flowers. B831, L. L. Fontaine. A832, Miss Bessie Fontana. B833, Marjorie Fontana. B834, Ben O. Ford. B835, Miss Della Ford.

A836, Miss Hallye R. Ford. B837, Mrs. Lucie R. Ford. B838, Elizabeth Fraas. A839, Charles F. Francke, Administrator of the estate of Mrs. Laura H. Francke. B840, Louis Franconia. B841, Mrs. Ida Frank. B842, Janet Brodie Frank. B843, Dr. Louis Frank. B844, Louis Frank. B845, L. Wallace Frank. A846, Rudolph Frank. B847, Franklin Printing Co. B848, Raymond Franklin. B849, Mrs. Grace J. Frantz. A850, Samuel D. Boden, Executor of the estate of Mrs. Francesca Franzmann.

A851, Raymond L. Hall, Distributee. A852, Robert L. Hall, Distributee. A853, Louise F. Boden. B854, George Franzmann. B855, Harry Franzmann. B856, Miss Louisa Franzmann. B857, Miss Matilda J. Frazee. B858, Miss Matilda J. Frazee, Tr. B859, Lincoln Bank & Trust Co., Executor of the will of Samuel E. Frazee, deceased. A860-1, Juliet C. Frazier, Executrix and distributee of Silas L. Frazier, deceased. B862, Mrs. Virginia S. Frazier. A863, Harry Frederick. B864, Mrs. Elizabeth C. Frehse. A865, Edward W. Fries. A866, Mrs. Elnora Fritz. B867, Joseph H. Fromholtz. A868-9, Arthur John Unglaub and Ida Helen Fromm, Executors of the Estate of Fred Fromm, deceased. A870, Louisville Trust Company, Administrator w/a of the estate of William Frommiller, deceased. B871, Bernard A. Fueglein. A872, Miss Mary Ann Fueglein. B873, Isaac T. Fugate. B874, Bruce Funk. B875, John Furey. B876, Gilbert Gadjen. A877, Mary Christina Cottell, Administratrix de bonis non with the will annexed of Phillip A. Gaertner, deceased. A878, M. C. Cottell, Admx. of the Estate of Bettie Gaertner, deceased. A879, Mary Christina Cottell, Trustee for Phillip Gaertner Cottell. A880, Mary Christina Cottell. B881, Miss Alice Muriel Gagga. B882, Mrs. Alice H. Gaines. B883, Bernard M. Gallagher. B884, Miss Myra Galvin. B885, William P. Gambert. A886, Fidelity and Columbia Trust Co., Executor of the will of Annie J. Gamble, deceased. A887, Fidel-

ity and Columbia Trust Co., Administrator w/a of Thomas Hoyt Gamble, deceased, successor in interest to Rose Gamble, deceased. A888, Fidelity and Columbia Trust Co., Administrator w/a Thomas Hoyt Gamble, deceased. B889, Miss Wilma Gamble. B890, Albert J. Gans. B891, Mrs. Mary T. Gans. B892, Joseph H. Ganz. A893, Lena V. Garnett, Executrix of the will of James Garnett, deceased. B894, James Garnett, Jr. B895, Mrs. James Garnett. B896, Miss Jennie W. Garnett. B897, Mary Gunn Garnett. B898, Mrs. Mary T. Garrard. B899, Lewis L. Garrett. B900, Mrs. Phillippine A. Garretty.

B901, Mrs. Christine P. Gates. A902, Jessie Pierle Gates, Executrix of the will of Charles D. Gates, deceased. B903, Fred W. Gates. B904, Edward J. Gathof. B905, S. Nicholas Gathof. B906, Mrs. Irene H. Gathright. B907, Paul P. Gaylord. B908, Wilbur E. Geiser. B909, General Association of Baptist in Ky. B910, George A. Georgel. B911, Edward Gernert. B912, Miss Clara Gerst. B913, Walter F. Gerst. B914, Miss Carrie T. Gfroerer. B915, Samuel Gfroerer. B916, Anderson A. Gibson. A917, Marguerite Gifford, Executrix of the estate of Morris B. Gifford, deceased. B918, Mrs. Sallie E. Gilkerson. B919, Miss Aurena B. Gilliford. B920, Edward M. Gilligan. B921, Thomas J. Gilligan. B922, Herman Gimpel. B923, Walter H. Girdler. B924, John Guigliana, Executor of the estate of Miss Agnes Guigliano, deceased. B925-6, George A. Glass and Irene E. Glass. B927, George Glass, Jr. B928, Vernon Clyde Glass. B929, Mrs. Annie R. Glazebrook. A930, Fidelity & Columbia Trust Co., Executor of the will of James Glazebrook, deceased. B931, William A. Glazebrook. B932, Dennis J. Gleeson. B933, Mrs. Margie R. Gleeson. B934, Seldon R. Glenn. B935, Miss Anna C. Goby. B936, Francis J. Goby. B937, Martin S. Goby. B938, William E. Goepper. B939, Mrs. Katherine Goering. B940, Leonard C. Goering. B941, William H. Goering, Jr.

B942, William H. Goering, Sr. B943, Frank U. Gohman. B944, Charles G. Goitein. B945, Miss Carrie Goldbach. B946, Fred E. Goldbach. B947, John E. Goldbach. B948, Miss Lula Goldbach. B949, Morris Goldberg. B950, Mrs. Ollie Morris Goldsborough.

B951, Mrs. Willie F. Goldwaite. B952, John Gollar, Jr. B953, Miss Anna R. Gooch. B954, Miss Clara S. Gooch. B955, Miss Lucy C. Gooch. B956, Louis Goodfriend. B957, Hallie Dudley Goodloe. B958, Fleet H. Goodridge. B959, Mrs. Lillian E. Goodwin. B960, Angus W. Gordon. A961, Elizabeth C. Gordon, Executrix of the estate of Robert B. Gordon, deceased. B962, Miss Lila Gore. B963, James T. Gorley. B964-5, Albert C. Gorman & Aline Gorman. B966, Mrs. Anna C. Goss. B967, Mary Suretta Goss. B968, Miss Bridget Grace. B969, Harry Gradman. B970, Edward S. Graff. B971, Albert Grall. B972, Miss Elizabeth Gramig. B973, John Herman Gramig. B974, Anne Wood Grant. B975, Mrs. Eunice Tyler Grash. B976, Frances C. Grauman. B977, Angereau Gray. B978, William Henry Gray, Executor of the estate of Henry O. Gray, deceased. A979, Kentucky Title Trust Company, Administrator with the will annexed of Henry S. Gray, deceased. B980, John E. Gray. A981-2, Georgia Tyler Greathouse, Executrix and distributee of the estate of Joseph W. Greathouse, deceased. B983, Miss Allan Lake Green. A984, United States Trust Company, Admr. w/a of the estate of Mrs. Annie Amis Green, deceased. A985, Marion A. Green. B986, United States Trust Co., Trustee for Marion A. Green. B987-8, Miss Dora Green and Elizabeth Green. B989, Lavelle B. Green. B990, Denton O. Green. A991, Fidelity & Columbia Trust Company, Executors of the Estate of Susa T. Green, deceased. B992, Thomas Green. B993, M. F. Greenstein. B994, Simon J. Greenstein. B995, Mrs. Mary McKee Greer. B996, Samuel P. Gresham. B997, Claude Gressman. B998, Henry J. Greive. B999, James H. Griffin.

A1000-1-2-3, Catherine Green and Estella Griffin Lord, Administratrices and distributees of the estate of Joseph T. Griffin, deceased. B1004, Annie H. Grinstead. B1005, R. Hewett Grinstead. A1006, Louisville Trust Company, Administrator of the estate of R. Hewett Grinstead, deceased. B1007, Alex V. Griswold. B1008, Mrs. Alex V. Griswold. B1009, Mrs. Emma N. Griswold. B1010, Howard G. Griswold. B1011, Mrs. Mary L. Griswold. B1012, Miss Carrie R. Gross. B1013, Mrs. Marie R. Grosvenor. B1014, Edward Groth. B1015, Miss Anna K. M. Grunder. B1016, Corinne E. Grunder. B1017, Fred Guembel. B1018, Gordon B. Guernsey. B1019, Miss Amelia B. Guetig. B1020, Nettie J. Guetig. B1021, Mrs. Lela Gunterman. B1022, Charles P. Gunther. B1023, George Gunther. B1024, Mrs. Margaret Gunther. B1025, Mrs. Amy Guntermann. B1026, Conrad H. Gutermuth. B1027, Mrs. Benita M. Guthrie. A1028-9, Nettie E. Gutig, Executrix and distributee of the estate of George Gutig, deceased. B1030, Shirley E. Haas. B1031, William A. Haas. B1032, Miss Carrie K. Hach. B1033, Mrs. Grace Goode Hackett. B1034, Miss Mary L. Hackett. B1035, Albert J. Hackman. B1036, Miss Sallie J. Haden. B1037, Robert J. Hafendorfer. B1038, Herbert Hart Hagan. B1039, Mrs. Charles H. Hagerty. B1040, Mrs. Lucy Hagerty. B1041, Earl D. Hale. B1042, Joseph G. Hale. B1043, Mrs. Lena B. Hale. B1044, Mrs. Gertrude Laib Hall. B1045, John A. Hall. B1046, Mrs. Rae Hall. B1047, Pearl May Hall, Executrix of the estate of William P. Hall, deceased. B1048, Annie A. Halleck. B1049, William V. Hambleton. B1050, Alexander G. Hamilton.

B1051, Arch L. Hamilton. B1052, Clifford R. Hamilton. B1053, Harry M. Hamilton. B1054, Mrs. Julia A. Hamilton. B1055, William H. Hamilton. B1056, Earl Hammann. B1057, George Hammann, Jr. B1058, George W. Hammann, Sr. B1059, Miss Adelle W. Hammill. B1060, Mrs. Mary S. Hammill. B1061, William A. Hammill.

B1062-3, Mary Hammill, Executor and individually, of the estate of William B. Hammill, deceased. B1064, Henry S. Hammond. B1065, J. Duffy Hancock. B1066, Miss Josephine Hancock. B1067, Bernard Handmaker. B1068, Mrs. Ethel B. Handmaker. B1069, Ethel B. Handmaker, Extx. of the Estate of Sidney B. Handmaker, deceased. B1070, Granville S. Hanes. B1071, Robert G. Haney. B1072-3-4, Gus Hank, Sr., Gus Hank, Jr., Harry Hank, Partners trading and doing business as Hank Bros. B1075, Oscar C. Hank. B1076, Mrs. Anna R. Hanks. B1077, J. Robert Hanks. B1078, Mrs. Mary H. Hanly. B1079, Miss Bezzie Hannan. B1080, William G. Hannan. B1081, Edward G. Hannon. B1082, Miss Mary F. Hannon. B1083, Richard C. F. Hansen. B1084, A. Moorman Hardaway. B1085, Mrs. Olla Mae C. Hardaway. B1086-7, Marion and Lee P. Hardesty, doing business as Hardesty Pharmacy. B1088, Richard W. Hardesty. B1089, Mrs. Viola R. Hardesty. A1090, Emma Graham Geiger, Administratrix of the estate of G. W. Hardin, deceased. B1091, Preston W. Hardin. B1092, Kate McGeher Hardy. B1093, Mrs. Ida L. Harlan. B1094, Marion B. Harlan. B1095, Mrs. Addie T. Harmon. B1096, Augusta Willey Harris. B1097, Mrs. Bessie Harris. B1098, George E. Harris, Jr. B1099, Mrs. Georgia W. Harris. B1100, Mrs. Laura L. Harris.

B1101, Sam Harris. B1102, Mrs. Sam Harris. B1103, Mrs. Sammie E. Harris. B1104, John H. Harrison. B1105, William B. Harrison. B1106, Mrs. Ruth W. Hart. B1107, Miss Josephine Hartlauf. B1108, Isaac S. Hartley. B1109, William F. Hartmetz. B1110, Allen P. Harvey. B1111, Barney M. Harwood. B1112, Miss Margaret M. Hassan. A1113, Thomas Hastings, Executor of the estate of Mrs. Anna B. Hastings, deceased. B1114-5, F. L. Hausman and H. H. Hausman, Partners doing business as Hausman Bros. B1116, Edgar B. Hawes. B1117, Mrs. Elsie S. Hawes. B1118, George Bright Hawes. B1119, George B. Hawes.

B1120, Mrs. Hettie S. Hawes. B1121, Mrs. Laura B. Hawes. B1122, R. Leo Hawes. B1123, William H. Hawes. B1124, Miss Ophelia Hay. B1125, H. Chester Haycraft. B1126, Josephine Hayes. B1127, Mrs. Etta Hast Hays. B1128, Thomas Graham; B1129, M. M. Hays; B1130, Dunlap Wakefield, Partners trading and doing business as E. W. Hays & Co. B1131, F. S. Hays. A1132, Alexander Bate, Executor of the estate of John Edwin Hays, deceased. A1133, Mrs. Etta Hast Hays, Distributee. B1134, Louise B. Hays. B1135, Miss Marguerite A. Hays. B1136, Mrs. Maria M. Hays. B1137, Mrs. Belle Hazzard. B1138, Oliver P. Hazzard. B1139, C. Bruce Head. B1140, Miss Maude Head. B1141, Harry M. Heath. A1142, Mrs. Amelia Hebel, Life Tenant, Chas. M. S. Hebel Estate. A1143, Amelia Hebel, Executrix of the will of Charles M. S. Habel, deceased. B1144, Mrs. Mollie Hebel. B1145, Louis C. Heck. B1146, George C. Heckel. B1147, Ray Heer. B1148, James E. Heffernan. B1149, E. Lee Heflin. B1150, William S. Heidenberg.

B1151, Fred F. Heidroske. B1152, Mrs. Melvina Heidroske. B1153, Edward J. Heimerdinger. B1154, L. Allen Heine. B1155, William B. Heller. B1156, Clarence J. Hellman. B1157, Mrs. Adelaide Stoll Helm. B1158, Mrs. Margaret S. Helm. A1159-60, Nelson Helm and Elizabeth Nelson Helm, Executors of the Estate of T. K. Helm, deceased. B1161, Edward E. Hemp. B1162, Elmer L. Henderson. B1163, George A. Hendon. B1164, Mrs. Dorothy A. Hendricks. B1165, Miss Hattie B. Henn. B1166, Harrison Hunter; B1167, O. T. Hunter; B1168, Louis Van Overbeke; B1169, Henning Chambers, Partners trading and doing business under the name of Henning Chambers & Co. B1170, Charles E. Henriett, Jr. B1171, Dr. M. Joseph Henry. B1172, Miss Violet F. Henry. B1173, Mrs. Lillian N. Henshaw. B1174, August Hepp. B1175, William F. Herberger. B1176, Miss Alberta Herman.

B1177, Mrs. Carrie E. Herr. B1178, Miss Elizabeth B. Herr. B1179, George Herrmann. B1180, Gilbert J. Hertel. B1181-2, Irwin Hertzman and Aaron Hertzman. B1183, Albert Hess. A1184-5, Julius P. Krieger and Milton Conrad, Executors of the will of Mrs. Catherine W. Hess, deceased. B1186, James R. Hess. B1187, John H. Hess. B1188, Mrs. Minnie Hesse. B1189, Mrs. Joan Hester. A1190, Ainslee Hewett. A1191, Nettie May Hewett. A1192, United States Trust Company, Trustee for Nettie M. Hewett, Distributee. A1193, Nettie May Hewett. A1194, George Ainslee Hewett, Distributee. B1195, Mrs. Margaret Fink Hewett. B1196, Mrs. Julia B. Heyburn. A1197, Fidelity & Columbia Trust Company, Executor of the Estate of Alice W. Heyman, deceased. B1198, Mrs. Etta E. Heymann. B1199, Charles W. Hibbitt. B1200, Robert F. Hibbitt.

B1201, Michael J. Hickey. B1202, Lindley A. Hickman. B1203, R. Baylor Hickman. B1204, Elmer H. Hicks. B1205, John Higgins. B1206, John W. Hikes. A1207, Verna Ray Hikes, Executrix of the will of Samuel L. Hikes, deceased. B1208, Verna Ray Hikes. B1209, Miss Florence Hildebrand. B1210, Charles V. Hill. B1211, Fred P. Hill. B1212, Howard M. Hill. B1213-14, Gerrit Hillebrand and Mattie Hillebrand. A1215, Isaac Hilliard; A1216, Edward H. Hilliard; A1217, Andrew J. Howard; A1218, Andrew P. Gies; A1219, Robert J. Theobald; A1220, Harold W. Walton; A1221, Marion H. Cardwell, Partners, trading and doing business under the firm name and style of J. J. B. Hilliard & Son. B1222, Dennis J. Hines. B1223, John O. Hines. B1224, Edward W. Hinkle. B1225, Walter D. Hitch. B1226, Harry L. Hoagland. A1227, Mrs. Lucy G. Hobbs. B1228, Lucy Gilmer Hobbs. B1229, Mrs. Jetta E. Hobson. B1230, Joseph T. Hodapp. B1231, Louis A. Hodapp. B1232, Mary Brodie Hodge. B1233, Clyde C. Hodges. B1234, Mrs. Margaret R. Hodges. B1235, Louis

F. Hoehle. B1236, Thatcher Hoertz. B1237, Walter J. Hoffman. B1238, Wm. L. Hoge. A1239, Hildegard D. Hohler. A1240, Margaret B. Hohler. A1241, Miss Matilda R. Hohler. B1242, Mrs. Esther K. Hokenson. B1243, Miss Fanny Holladay. B1244, William G. Holladay. B1245, Clarence R. Hollcroft. A1246, Alice Hollcroft, Executrix of the estate of Rice Hollcroft, deceased. B1247, Louis J. Hollenbach. B1248, Phil. G. Hollenbach. B1249, Miss Mary Hollenkamp. A1250, Annie Holman, Executrix of the estate of Paul W. Holman, deceased.

A1251, Miss Gertrude Holmes. B1252, Harry B. Holmes. B1253, Miss Elizabeth Holte. A1254-5, Katherine S. Holtevert, Executrix and distributee of the estate of Henry B. Holtevert, deceased. B1256, Raymond L. Holtzelaw. B1257, Rutherford R. Hoppe. B1258, Edwin Horn. A1259-60, Edith A. Horn, Executrix and distributee of the estate of Jacob H. Horn, deceased. B1261, Mrs. Julia B. Horn. B1262, Mrs. Lorraine G. Horn. B1263, McDowell Horn. B1264, William J. Horn. B1265, W. McDowell Horn. B1266, Mrs. Olga Horner. B1207, Robert C. Hoskins. B1268, William O. Hoskins. B1269, James J. Houghland. B1270-71, Roscoe S. Houghland and Mayme Houghland. B1272, Ben C. Howard. B1273, Edward E. Howard. B1274, William Porter Howard. A1275, Katherine P. Howe, Administratrix with the will annexed of the estate of Thomas M. Howe, deceased. B1276, Frank B. Hower. B1277, Mrs. Edyth W. Howry. B1278, Frank Huber. B1279, Joseph Huber. B1280, Allen K. Hudson. B1281, Jane Brodie Hudson. B1282, Mrs. Lillie H. Hudson. B1283, Walter E. Huffaker. A1284-85, United States Trust Co. and Ethel L. Hughes, Trustees u/w of Frank C. Hughes, deceased. A1286-7, United States Trust Company and Ethel L. Hughes, Executors of the Estate of Frank C. Hughes, deceased. A1288, Ethel L. Hughes, distributee. A1289, Anne E. Hughes, distributee. A1290, Janet E.

Hughes, distributee. A1291, Frank C. Hughes, Jr., distributee. B1292, Mrs. Maria C. Hughes. A1293, Fidelity & Columbia Trust Company, Executor of the will of Chas. F. Hughlein, deceased. A1294-5, Louisville Trust Company and Caroline Hume, Executors of the estate of William G. Hume, deceased. B1296, Mrs. Emmajen Y. Hummel. B1297, Harry K. Hummel. B1298, Heman Humphrey. B1299, Mrs. Wilhelmina Humphrey. B1300, J. Phillips Hundley.

B1301, Mrs. Sarah B. Hundley. B1302, Polk Hunter. B1303, Ray B. Hunter. B1304, Luther B. Hurst. B1305, Miss Elizabeth L. Husman. B1306, Mrs. Mary L. Hutcherson. B1307, Kentucky Title Trust Co., Administrator de bonis non with the will annexed of the estate of Caroline E. Hutchings, deceased. B1308, Eleanor T. Hutchings, Guardian Eleanor Hutchings. B1309, Eleanor F. Hutchings, Guardian William E. Hutchings. A1310, Kentucky Title Trust Company, Admr. de bonis non w/w/a of the Estate of Wm. E. Hutchings, deceased. B1311 Miss Winifred Hutchings. B1312, Mrs. Ben Louie Straus Hutchins. B1313, Mrs. Elizabeth Hutchison. B1314, Miss Margaret S. Hutchison. A1315, Sarah Scott Hutchison, Administratrix of the estate of William R Hutchison, deceased. B1316, Isadore Hyman. B1317, Robert C. Ilg. A1318, Henry W. Imorde, Executor u/w of Ben H. Imorde, deceased. B1319, Mrs. Mary Hinkle Imorde. A1320, Ernest Ios. A1321, Miss Jennie Ireland. B1322, J. Wiley Irvine. A1323-4, M. Evelyn Irving, individually, and M Evelyn Irving, Executrix of the estate of Lee D. Irving, deceased. B1325, Jacob L. Isaacs. A1326, Mrs. Agnes Ising. A1327, Henry Ising. B1328, Fidelity & Columbia Trust Co., Executor of the will of Albert Ivison. B1329, Miss Edna Jacke. B1330, Dora Jacke, Executrix of the will of William Jacke, deceased. B1331, Wm. A. Jackman. A1332, Mrs. Dorothy H. Jackson. B1333, Levi C. Jackson. A1334, Roy Jack-

son. A1335, Miss Rosanna Jacobs. A1336, Miss Fannie Jacobson. A1337, Zack Jacoby. B1338, Miss Margaret McMillan James. B1339, Mrs. Margaret Vance Jarvis. B1340, Mrs. M. Eunice Jean. A1341, Helen Herr Jefferson, Executrix estate of Chas. D. Jefferson. A1341, Helen Herr Jefferson, Executrix estate of Chas. D. Jefferson. A1342, Elizabeth Myer. B1343 Lewis S. Jefferson. B1344, Mrs. Sallie G. Jefferson. B1345, Miss Carrie U. Janne. B1346, Henry Jenne. A1347, Joseph Jenne. B1348, Mrs. Marie L. Jesse. A1349, Mrs. Amelia Johnson. B1350, Mrs. Amy Kohlhepp Johnson.

B1351, Charles A. Johnson. B1352, Mrs. Dora G. Johnson. B1353, Frank H. Johnson. A1354, Miss Golda W. Johnson. B1355, Henry M. Johnson. B1356, Agnes Johnson, Executrix of the will of John Hobart Johnson, deceased. B1357, Mrs. Mary B. Johnson. B1358, Mrs. Thos. J. Johnson. B1359, Wm. O. Johnson. B1360, Edward A. Jonas. B1361, Mrs. Margaret D. Jonas. A1362, Alice L. Jones. B1362, Alice L. Jones. B1363, Hugh R. Jones. B1364, James W. Jones. B1365, Mrs. Jennie Jean Jones. B1366, Mrs. Loulie W. Jones. B1367, Mrs. Mamie K. Jones. B1368, Samuel D. Jones. B1369, William E. Jones. A1370, Miss Ray Jordan. B1371, Alfred S. Joseph. B1372, Mrs. Dorothy L. Joseph. B1373, Mrs. Hannah Joseph. B1374, Oscar G. Joseph. B1375, Oscar G. Joseph, Jr. B1376, Mrs. Nancy Otter Joyce. B1377, Preston P. Joyes. B1378, Max Judah. A1379, Mrs. Sarah Kahn. B1380, Raymond G. Kaleher. B1381, Louis J. Kammerer. A1382, Miss Olivia Kaninberg. B1383, Louis F. Kanzler. B1384, Harry M. Kaplan. B1385, Charles W. Karraker. B1386, Davis Kasdan. B1387, Louis R. Kassenbrock. B1388, Mrs. Cora Kaufman. B1389, Mrs. Estelle C. Kaufman. B1390, Leo P. Kaufman. B1391, Miss Orlena A. Kaufman. B1392, Jere J. Kavanaugh. B1393, Miss Lilla S. Kavanaugh. B1394, John M. Keaney. A1395, John H. Kearns. A1396,

Leo G. Kearns. B1397, Charles E. Kebsch. B1398, Mrs. Lucille A. Koene. B1399, Mrs. Eugenie Hail Keeney. A1400, Mrs. M. Lillian Kegler.

A1401, Albert A. Keidel. A1402, David Y. Keith. B1403, Ernest Keller. B1404, Henry Keller. B1405, Mrs. Rosa Keller. B1406, Brown W. Kelley. A1407, Louisville Trust Company, Executor of the will of Milburn P. Kelly, deceased. B1408, Elizabeth Kelley, Distributee. A1409, Vinnie Valeria Kelley, Distributee. A1410, Ambie Milburn Kelley Hutcherson, Distributee. A1411, Ina Julia Lieber, Distributee. B1412, George E. Kelley. B1413, Mrs. Helen M. Kemnitz. B1414, Theodor Kemnitz. B1415, Robert L. Kemper. B1416, Walker W. Kemper. B1417, Richard M. Kendall. B1418, Miss Fannie Kennedy. A1419, Archibald D. Kennedy, Executor of the will of Samuel B. Kennedy, deceased. A1420, Archibald D. Kennedy. A1421, Fidelity & Columbia Trust Co., Executor of Estate of W. L. Kennett. B1422, Mrs. Olive B. Kenney. B1423, Kentucky Book Mfg. Co., Inc. B1424, Kentucky Title Trust Co. B1425, Mrs. Cornelia S. Kern. B1426, Mrs. Mary A. Kern. B1427, Phil G. Kern. B1428, Robert M. Kerr. B1429, Mrs. Annie Kersting. B1430, Henry A. Kersting. B1431, Joseph A. Kersting. B1432, John Kesselring. B1433, Miss Lula Kessler. B1434, Arthur S. Key. B1435, Albert S. Kiefer. A1436, J. Edward Kilgus, Executor of the Estate of J. George Kilgus. A1437, J. Edward Kilgus. B1438, Jacob E. Kilgus. B1439, James L. Killoran. B1440, John L. Kilroy. B1441, Marguerite K. Clark, Executrix of the estate of Miss Ida Kilvington. B1442, Joseph J. Kimbel. A1443-4, Fred and Anabel Kimmel. B1445, Mrs. Lyrtie Lindsay Kimmons. B1446, Matthew Wakefield King. B1447, Mrs. Susan F. King. A148, Ralph D. Kinnaird. A1448, Ralph D. Kinnaird. B1449, George T. Kinnarney. B1450, Jas. W. Kinnarney. B1451, Mrs. Mary S. Kinnarney. A1452, Mrs. Mayme S. Kinnarney. A1453, Edward N. Kippes. B1454, Mrs.

Elizabeth F. Kirkpatrick. B1455, E. Emmett Kirwan. B1456, James G. Kirwan. B1457, Mrs. Josephine S. Kirwan. A1458, Miss Ida May Kistner. B1459, John L. Klapheke. B1460, Fred J. Klausing. B1461, Miss Katherine M. Klausing. B1462, Mrs. Margaret Klefot. B1463, Harry J. Klein. A1464, John Edmond Klein, Executor estate Mrs. Clothilde Mouth Klein. B1465, Nathan Klein. B1466, Sam Klein. B1467, Mrs. Barbara Klein. B1468, Edward G. Klemm. B1469, Benjamin W. Kling. A1470, Harry F. Klingman. A1471, Mrs. Sara Klingman. B1472, Mrs. Lullie L. Klunder. B1473, Stella Klusmeyer, Executrix of the will of William F. Klusmeyer, deceased. B1474, Miss Hadley B. Knighton. B1475, Edward C. Knoop. B1476, Peter C. Knopf. B1477, John F. Knue. B1478, Benjamin Koby. B1479, Clifford H. Koch. A1480, Miss Elsie M. Koenig. B1481, Miss Florence C. Koenig. A1482, Frew W. Koestel. B1483, Eugene B. Kohlhepp. A1484, Elmer H. Kohlhorst. A1485, William T. Kohlhorst. B1486, Celia Kohn, Administratrix of estate Ben J. Kohn, deceased. B1487, Jean Kohn. B1488, Walter I. Kohn. B1489, George C. C. Kolb. B1490, Louis F. Kolb. B1491, Miss Rosa Kolb. A1492, Edward A. Koop. B1493, Mrs. Jane M. Koop. B1494, William Kopmeier. A1495, Miss Eleanor B. Kopp. A1496, Miss Rose Kopp. B1497, Louis Korb. B1498, Miss Marie Korb. B1499, William L. Korb. A1500, Miss Louise M. Korfhage.

B1501, Louis C. Kosse. B1502, Fred Kostrzewa. A1503, Edward A. Kraft, Jr. B1504, H. Nellis Kraft. B1505, Robert P. Kraft. B1506, Henry C. Kraher. B1507, Fred A. Kratch. A1508, Thelma Krausgill. B1509, Mrs. Belle Gordon B. Krebs. B1510, Charles C. Krebs. B1511, Miss Agnes V. Kremer. B1512, Miss Blanche Kremer. A1513, John Kremer. B1514, Miss Loraine Kremer. B1515, Miss Katherine D. Kress. B1516, William Krieger. A1517, Miss Marie L. Kronenberg. B1518, Henry Krusenklau. B1519,

Walter B. Kuersteiner. B1520, Miss Alma Kuhn. B1521, Martin L. Kuhn. A1522, Miss Margaret Kummritz. B1523, Edward A. Kunz. B1524, John J. Kunz. B1525, W. F. Edwin Kunz. B1526, A. V. Kurowiski. B1527, Herman F. Kurz. B1528-9, Mrs. Anelia and Eugene C. Kuttner. A1530, Mrs. Mary Kyne. B1531-2, Edmund S. and Mary LaFollette. B1533, Mrs. Jeannette Lehman. B1534, Miss Ida Lampe. B1535, Mrs. Johanna K. Lampton. B1536, Mrs. Helena Land. A1537, Sara Landau, as Administratrix d b n c t a of the Estate of Fred Landau, deceased. A1538, Mrs. Adrienne Lane. A1539, Mrs. Mary C. Lane. B1540, Miss Caroline E. Lang. B1541, Joseph Lang. A1542, Otto C. Lang. A1543, Otto & Robert Lang. B1544, Theodore A. Lang. B1545, George W. Langford. B1546, Mrs. Mary Gilbert Langford. A1547, Miss Hazel Languell. B1548, Frank H. Lanham. B1549, Ruth B. Lapointe. B1550, Hans C. Larsen.

B1551, John W. Latham. B1552, Jacob Laub. A1553-4, Fidelity & Columbia Trust Co. and W. R. R. LaVielle, Executors of the Estate of Isabel Ray LaVielle. B1555, Mrs. Vaden B. Lawrence. B1556, Miss Christine Leyer. B1557, Charles F. Leathers. B1558, John Alien Leathers. A1559, Frank J. Lechleiter. B1560, Mrs. Estelle Lee. B1561, Mrs. Estelle K. Lee, Executrix of the will of John J. Lee, deceased. B1562, Mrs. Louise B. Lee. B1563, Mrs. Mary L. Lee. A1564-5, Caroline Apperson Leech, Executrix and distributee of the estate of Caroline A. Leech. B1566, Miss Carolyn Apperson Leech. B1567, Jennie B. Leedom. B1568, Walter V. Leedom. B1569, Frank J. Lefevre. A1570, Fidelity & Columbia Trust Co., Executor of the estate of Louis Leib, deceased. A1571, Miss Lillian Leibold. A1572, Miss Ophelia Leibold. B1573, Charles F. Leis. B1574, George F. Leonard. B1575, Mrs. Lillie K. Leonhart. B1576, Mrs. Rose Leonhart. B1577, Lawrence S. Leopold. B1578, Miss Willie D. Lepping. B1579, Mrs.

Lottie M. Letterle. B1580, Mrs. Alma B. Letzler. B1581, Max Levi. A1582-3-4, Simon Cohen, Executor of the Estate of Samuel Levine, and Tony Levine, and Sarah Levine. A1583, Tony Levine. B1585, Fred Levy. B1586, James S. Levy. B1587, Louis M. Levy. B1588, L. M. Levy. B1589, Markham Levy. B1590, Mrs. Ada Obryan Lewis. A1591, Edward M. Lewis, Executor of the estate of Esmeralda B. Lewis, deceased. A1592, Edward M. Lewis, Executor of the estate of Mrs. Esmeralda B. Lewis, deceased. B1593, Mrs. Frances Reed Lewis. A1594, Percy N. Booth, Administrator of the estate of H. Hamilton Lewis, deceased. B1595, Mrs. Mayme K. Lewis. A1596, Orand B. Lewis. B1597, Lewis & Culp, Inc. B1598, Jacob B. Lewman. B1599, Miss Mary H. Lewman. B1600, Mrs. Mary V. Lewman.

B1601, Miss Bessie M. Lichten. B1602, Mrs. Carrie Lichten. B1603, Mrs. Emma Lieber. B1604, Fred H. Lieber. A1605, H. Daniel Sabel, Executor and Trustee of the Estate of Henry Lieberman, deceased. B1606, Campbell E. Lindsey. B1607, H. Watson Lindsey. B1608, John B. Lindsey, Jr. A1609, Thomas N. Lindsey, Executor of the estate of Joseph W. Lindsey, deceased. A1610, Joseph W. Lindsey, Jr., Distributee. A1611, H. Watson Lindsey, Distributee. A1612, Thomas N. Lindsey, Distributee. A1613, Eliza L. Williams, Distributee. A1614, Marie L. Rogers, Distributee. B1615, Julia B. Lindsey. B1616, Alvin Linker. B1617, Barnet Linker. B1618, Harry Linker. B1619, Ernest R. Lips. B1620, Miss Angela Liston. B1621, Miss Nellie Liston. B1622, Mrs. Cora G. Littlepage. B1623, Miss Fannie Loewenstein. B1624, Wells C. Logan. B1625, Latimer H. Long. B1626, Lewis R. Long. B1627, Victor M. Lorch. B1628, Mrs. Pearl M. Loughridge. A1629, Kentucky Title Trust Company, Trustee under the will of Amelia W. Anderson. A1630, Lucinda Morris. A1631, Emma W. Anderson. A1632, Stephen E. Baird.

A1633, Kentucky Title Trust Co., Trustee u/w of Mary B. Brown. A1634, Kentucky Title Trust Co., Trustee u/w of Mary Barclay Brown. B1635, Louisville Trust Co., Trustee for Laura R. Bashaw, deceased. A1636, Fidelity & Columbia Trust Co., Trustee u/w of Clara K. Bullitt. A1637, Anne Bullitt Brewer, Distributee under the will of Clara K. Bullitt, deceased. A1638, Kentucky Title Trust Company, Trustee u/w of Kate W. Crawford, deceased. A1639, Liberty National Bank & Trust Company, Trustee for Minnie Detchen. A1640, Liberty National Bank & Trust Company, Trustee u/w of George W. Detchen, deceased. A1641, Liberty National Bank & Trust Company, Trustee u/w of Louisa S. Detchen. A1642, Fidelity & Columbia Trust Company, Trustee u/w of W. W. Drummond. A1643, Kentucky Title Trust Company, Trustee u/w of B. F. Guthrie, deceased. B1644, United States Trust Company, Trustee u/w of Joseph Hahn, Sr. A1645, Isabel Haldeman. A1646, Kentucky Title Trust Company, Trustee u/w of Jennie C. Hanks. B1647, Louisville Trust Company, Trustee u/w of Theodore Harris. B1648, Louisville Trust Company, Trustee for William Hastings. A1649, Fidelity & Columbia Trust Company, Trustee under the will of Frank Heck. A1650, Fidelity & Columbia Trust Company, Executor of the estate of Mary B. Heck.

A1651, Kentucky Title Trust Company, as Trustee for Francis Griffiths Hogan. B1652, Louisville Trust Company, Trustee u/w of J. Price Hudson. B1653, Louisville Trust Company, Trustee for Rose Anna Hughes. B1654, Louisville Trust Company, Trustee for John F. Kellner. A1655, Annie Leathers Duncan, Distributee. A1656, Stuart Robinson Leathers, Distributee. B1657, Louisville Trust Company, Trustee u/w of J. Lewis Letterle. A1658, Kentucky Title Trust Company, Trustee u/w of G. H. Lindemberger, deceased. A1659, James W. McGrath. A1660, Robert E. McGrath. A1661, Helen F. McGrath Griffin.

A1662, Mary Louise McGrath. A1663, Fidelity & Columbia Trust Company, Trustee of Frank A. Menne. A1664, Fidelity & Columbia Trust Company, as Trustee for Lucy Elizabeth Moorman. A1665, First Owensboro Bank & Trust Co., Trustee u/w of C. L. Moorhead for C. J. Moorhead. A1666, First Owensboro Bank & Trust Co., Trustee u/w of C. L. Moorhead for Fannie Morgan. A1667, First Owensboro Bank & Trust Co., Trustee u/w of C. L. Moorhead for Clara Blocher. B1668, Louisville Trust Company, Trustee for G. H. Mourning. A1669, Kentucky Title Trust Co., Trustee for Caldwell Norton. A1670, Effie L. Powers. A1671, Kentucky Title Trust Co., Trustee u/w of A. H. Robinson. A1672, Kentucky Title Trust Co., Trustee u/w of Warren A. Smith. B1673, Louisville Trust Co., Trustee u/w of Henry Strater. B1674, Mrs. Henrietta B. Loventhal. B1675, Miss Emma Loving. B1676, Robert H. Lowenthal. B1677, Philip B. Lowich. B1678, Albert R. Lucas. B1679, Alberta Lucas. B1680, Alberta T. Lucas. B1681, Mrs. Josephine T. Lucas. B1682, Gracey H. Luckett. B1683, Clem Luken. B1684, Clifford Lussky. B1685, Mrs. Edith Gast Lussky. B1686, William Gast Lussky. B1687, Mrs. Lily Nolen Luten. B1688, Miss Maude Lutes. B1689, James S. Lutz. B1690, Mrs. Perry F. Lynn. B1691, Abe Lyon. A1692, Albert P. Lyon, Amdr. c. t. a estate of Mrs. Ada Lewis Lyon. A1693, Albert P. Lyon, Distributee. B1693, Albert P. Lyon. B1694, H. Guy Lyon. B1695, Mrs. Kathleen Kelly Lyon. B1696, S. C. Lyons; B1697, M. G. Lyons; B1698, J. M. Warden; B1699, B. C. Lyons; B1700, W. L. Lyons; B1701, Baylor Landrum; B1702, F. P. Kemp; B1703, V. L. Shallcross, Partners doing business under the firm name and style of W. L. Lyons & Co. B1704, Walter J. Lyter. B1705, Clinton J. McAfee. A1706, Henry Berryman McAfee. B1707, George H. McAlister. B1708, Miss Grace C. McBride. B1709, Grace C. McBride, Executrix of the Will of Howard S. McBride, de-

ceased. B1710, A Clayton McCarthy. B1711, Miss Mary McCarty. B1712, William J. McCarthy. B1713, Joseph N. McClellan. B1714-5, Leonard B. McClellan and Sarah McClellan. A1716, Mrs. Helen G. McCloud. B1717, Joseph F. McCloud. B1718, John H. McClure. B1719, Miss Mary E. McClure. B1720, Richard L. McCready. B1721, Miss Catherine McCrone. B1722, Mrs. Ida M. McCulloch. A1723, C. Clarke McCulloch, Executor of the will of Manie C. McCulloch, deceased. B1724, Mrs. Mary M. McDevitt. B1725, Charles H. McDonald. A1726, Edward McDonald. B1727-8, John D. McDonogh and Georgia R. McDonogh. B1729, Mrs. Elise B. McDowell. B1730, Alfred R. McFarland. B1731, John B. McFerran, Jr. B1732, James F. McGee. B1733, Martin A. McGee. B1734, Mrs. Marie D. McGoodwin. B1735, Mrs. Grace McGowan. B1736, Michael W. McGrath. B1737, James S. McKenna. A1738, James S. McKenna, Executor of the estate of Stafford E. McKenna, deceased. B1739, Mrs. Evelyn B. McKenzie. B1740, Mrs. Stella McKiernan. B1741, Mrs. Rosa H. McLennan. B1742, Elmer L. McMillan. B1743, Allen McNally. B1744, Miss Mary McNamara. A1745, Mrs. Bessie McNaughton. A1746, Thomas F. McNaughton. A1747, Mrs. Catherine McNerney. A1748, Edward A. McNerney. A1749, Edward A. McNerney, Jr. B1750, Mrs. Daisy L. McQuary.

B1751, Hugh J. McShane. B1752, Thomas McShane. B1753, J. Ross McWilliams. B1754, Mrs. Leila Duncan McWilliams. B1755, Mrs. Susie W. McWilliams. B1756, Warren E. MacGregor. A1757, Mrs. Rose G. MacNeal. B1758, Albert B. Madlon. B1759, Clyde D. Magruder. A1760, Mrs. Rose Shea Maier. B1761, Adolph R. Maier. B1762, Charles Maier. B1763, John P. Mallett. B1764, Mrs. Mary C. Malone. B1765, James J. Maloney. B1766, Miss Julia Maloney. B1767, Miss Margaret L. Maloney. B1768, Miss Nellie Maloney. A1769, Thomas J. Maloney.

B1770, Charles H. Manion. B1771, Henry B. Manly. B1772, Irvin Mann. B1773, Walter S. Mansfield. A1774, Miss Ada May Maple. B1775, Mrs. Elizabeth Marion. B1776, M. C. Marjon. B1777, Arthur P. Markendorf. B1778, Mrs. Elizabeth Marks. B1779, Mrs. Esther Marks. B1780, Alphonse M. Marret. B1781, Mrs. Varina Davis Marret. A1782, John Marshall, Jr., as Trustee of Elizabeth M. Barrett Estate. B1783, George E. Martin. B1784, Lyman C. Martin. B1785, Mrs. Mamie M. Martin. B1786, Robert S. Martin. A1787-8, Fred M. Matthews and Mrs. Agnes J. Matthews. B1789, Allen Mattingly. A1790, Miss Alma Mattingly. B1791, Mrs. Lela Elkin Mattingly. B1792, Louis J. Mattingly. B1793, Martin E. Mattingly. A1794, M. E. Mattingly. B1795, Thomas J. Mattingly. B1796, Marcellus G. Mature. B1797, Mrs. Hannah Maurer. A1798, Mrs. Catherine May. A1799, Charles M. May. B1800, Charles W. May.

B1801, Milton D. May. B1802, Edward S. Mayer. A1803, Mrs. Fannie S. Mayer. B1804, J. Edward Mayle. A1805, Miss Virgie Maynard. B1806, John A. Mazzoni. B1807, James A. Means, Jr. B1808, Edward Meglemry. B1809, William Mehler. A1810, Joseph S. Meixel. A1811, Mary B. Mell. B1812, Mrs. Florence S. Melton. B1813, Ernest N. Menar. B1814, Mary Castleman Mengel, Extx. of the will of Clarence R. Mengel, deceased. B1815, Charles D. Mercke, Admr. c t a estate of Clarence C. Mercke. B1816, Geo. Mercke. A1817, Miss Martha Merrifield. B1818, Mrs. Maude L. Merriman. B1819, Ben J. Metcalfe. B1820, Mrs. Elizabeth Metcalfe. B1821, Mrs. Katherine M. Metcalfe. A1822, Henry J. P. Metz. B1823, Luella F. Metz, Extx. of the estate of Louis F. Metz, deceased. B1824, Fred G. B. Metzner. B1825, Fred Menter. B1826, Miss Anita Meyer. B1827, Berent A. Mayer. B1828, Miss Elizabeth Ball Meyer. A1829, Miss Elsie Meyer. B1830, Peter H. Meyer, Jr. B1831, Max Miehle. B1832, Rudolph V. Miersch.

B1833, J. Fred Miles. B1834, Mrs. Alice Miller. A1835, Mrs. Anna Baird Miller. B1836, Mrs. Alice L. Miller. B1837-8, Francis W. Carpenter and Nancy M. Miller, Co-executors of the will of Ben M. Miller, deceased. B1839, Mrs. Ben M. Miller. B1840, Mrs. Bettie H. Miller. B1841-2, Charles H. Miller and Mary B. Miller. B1843, Christian C. Miller. B1844, Emil F. Miller. A1845, John A. Miller, Executor of the will of Edmund D. Miller, deceased. A1846, John A. Miller, Distributee. B1847, Frank H. Miller. B1848, George M. Miller. B1849, Gordon Miller. A1850, Miss Hettie L. Miller.

A1851, James R. Miller. B1852, John Amos Miller. B1853, J. S. Miller. A1854, Louisville Trust Company, Exor. of the estate of J. William Miller, deceased. B1855, Mrs. Lottie C. Miller. B1856, Mrs. Mary Floyd Miller. B1857, Mrs. Mary L. Miller. B1858, Neville Miller. B1859-60, Camelle R. Miller and Henry Miller, joint Executrix and Executor of the will of Perry B. Miller, deceased. B1861, Mrs. Viola McK. Miller. B1862, Will B. Miller. B1863, William S. Miller. B1864, Zeno A. Miller. B1865, Mrs. Jennie E. C. Mills. B1866-7, Thomas H. Minary, Jr., and Georgia S. Minary, Executors of the will of Thomas H. Minary, Sr. A1868-9-70, Louisville Trust Company, Thomas H. Minary and Howard B. Lee, Executors of the estate of Thomas J. Minary. A1871, Charles W. Minrath. A1872, Louis Misback. B1873, Mary E. Mitchell, Executrix of the will of Charles C. Mitchell, deceased. B1874, J. Hascall Mitchell. B1875, Miss Katherine Mitchell. A1876, J. H. Mitchell, Executor of the estate of Robert Mitchell, Sr. A1877-8, Lizzie Mitchell and J. H. Mitchell. B1879, A. Frank Mock. B1880, Model Home Construction Company. A1881-2-3, Mattie A. Moeller and Freda Moeller Krause, and Rudolph Moeller. A1884, Miss Edna Mohlenkamp. A1885, Miss Florence Mohlenkamp. B1886, Edward L. Moll. A1887, Stephen F. Mongan. A1888, Ken-

tucky Title Trust Company, Admr. D.B.N. w/a Mrs. Clara V. Montz. B1889, Mrs. Florence M. Montz. B1890, Scott W. Moore. B1891, Mrs. Dorothy Moorhatch. B1892, The Charles P. Moorman Home for Women. B1893, Miss Emma Lee Moorman. B1894, Frank J. Morat. B1895, Mrs. Rose Morath. B1896, John J. Moren. B1897, Miss Anne Moriarty. B1898, Miss Catherine Moriarty. A1899, Miss Eleanor C. Moritz. A1900, John J. Moritz.

B1901, Mrs. Florence Morris. A1902, Fannie Newton Knight, Executor of the estate of John Mason Morris, deceased. B1903, Jos. W. Morris. A1904, Mrs. Mary D. Morris. B1905, Miss Ellen W. Morrison. B1906, Mrs. Mary H. Morriss. B1907, Miss Hildred Morrow. B1908, William E. Morrow. A1909, David C. Morton. B1910, Edward D. Morton. B1911, Mrs. Mary M. Morton. B1912, Rogers C. B. Morton. B1913, Thruston Ballard Morton. B1914, Gustav A. Moser. B1915, Mrs. Marie B. Moses. A 1916, Mrs. Minnie A. Mosher. B1917, William L. Mosier. B1918, Mrs. Agnes R. Mossbarger. A1919, Mary B. Ament, Executrix of the estate of Miss Margaret Mossbarger, deceased. B1920, Miss Gussie Mae Mudwilder. B1921, Miss Gretchen Mueller. A1922, Rudolph Mueller. A1923, W. T. Beckham, Executor of estate of Anna B. Muir, deceased. B1924, Joseph Sloan Muir. B1925, William F. Mullally. A1926, Miss Lois A. Mullin. B1927, Mrs. Celia Murphy. B1928, Chester R. Murphy. B1929, Miss Della G. Murphy. B1930, 1931, 1932, 1933-4, Louisville Trust Co. and Mary Sue Murphy, Co-executors u/w of James C. Murphy, deceased, and Peter J. Murphy and Robert T. Burke, Executors and Mary Sue Murphy, Administratrix with the will annexed of the estate of D. X. Murphy, deceased. B1935-6-7, Peter J. Murphy and Robert T. Burke, Executors and Mary Sue Murphy, Admx. w/a of the estate of Dennis X. Murphy, deceased. B1938, Mrs. Eva C. Murphy. B1939, Miss Honor Murphy. B1940-1, Louisville Trust Company

and Mary Sue Murphy, Executors of the estate of James C. Murphy, deceased. B1942, Miss Katherine Murphy. B1943, Miss Mary Denis Murphy. B1944, Mrs. Mary Sue Murphy. B1945, Miss Anna B. Murray. B1946, Henry H. Murray. A1947, Martin M. Murray. B1948, Mrs. Elizabeth J. Myer. B1949, Sam P. Meyer. B1950, Melvin Myers.

B1951, Eleanor J. Naber, Executrix of the will of George H. Naber, deceased. B1952, Geo. H. Naber, Jr. B1953, Mrs. Louise M. Nachand. B1954, Helen Vogt Nagel, Executrix will of Mrs. Mary Nagel, deceased. B1955, W. Rudolph Nagel. B1956-7, Kentucky Title Trust Company, Trustee for Ferda Zorn Moren, and Ferda Zorn Moren. B1958, Lamar W. Neblett. B1959, Clarence H. Neel. B1960, Geo. C. Neel. B1961, Harrell H. Neel. B1962, Martin R. Neel. B1963, Charles O. Neff. B1964, Van B. Nelson. B1965, Mrs. Cleo Nettleroth. A1966, Christopher L. Neu. A1967, Herman D. Newcomb. B1968, Miss Martha C. Newman. A1969, Fidelity & Columbia Trust Co., Executor of estate of Martha Frances Newman. B1970, Mrs. Emma H. Nichols. B1971, Mrs. Anne F. Nicholson. A1972, Miss Amelia Niehaus. A1973, Jos. A. Nightingale. B1974, Walter J. Nisbet. B1975, Elmer J. Nitzken. A1976, Kentucky Title Trust Co., Admr. de bonis non with will annexed estate of G. Douglas Nock, deceased. B1977, Alphonse L. Noe. B1978, Mrs. Hattie Lee Noe. A1979, Mrs. Willie H. Nold. B1980, Emil F. Nolte. B1981, Edward Nord. A1982, Chas. B. Nordeman. B1983, Mrs. Ella T. Norton. B1984, Mrs. Nannie S. Norton. B1985, Eugene M. Nourse. B1986, Mrs. Estelle Nudyke. B1987, Fidelity & Columbia Trust Co., Executor will of Katherine E. Nugent. B1988, Mrs. Mattie Nugent. B1989, Thos. L. Nugent. B1990, Wm. F. Nugent. B1991, Mrs. Jennie L. Nunn. B1992, Carl Nussbaum, Jr. B1993, Sam Nuttall. B1994, Mrs. Ida M. Eich Nuxol. B1995, Mrs. Julia Obermeier. B1996, Edward J. O'Brien, Jr. B1997, Edwin J. O'Brien, Jr. B1998, Edwin J. O'Brien, III.

B1999-2000, 2001, 2002, E. J. O'Brien, Jr., Elizabeth G. O'Brien, J. B. O'Brien and J. G. O'Brien, Partners trading and doing business under the firm name and style of E. J. O'Brien & Co. B2003-4-5, Edwin J. O'Brien, Jr., Joseph B. O'Brien and Richard J. Whelan, Executors of the will of Elizabeth G. O'Brien, deceased. B2006, Arthur H. Ochs. B2007, Emil Ochsner. B2008, Miss Ella O'Conner. B2009, William O'Dea. B2010, Mrs. Kathleen O'Doherty. B2011, Joseph O'Donnell. A2012, Peter J. O'Donnell. A2013-4-5, John F. Oertel, Jr., Karl H. Lang, and the Liberty National Bank and Trust Co., as Trustees for John F. Oertel, Jr., Mary Louise Oertel and Josephine Oertel. A2013-4-5, Liberty National Bank & Trust Company, John Oertel, Karl H. Lang, Liberty National Bank & Trust Company, Acting Agent, Executors of the Estate of John H. Oertel, deceased. A2016, Mrs. Elizabeth B. O'Gara. B2017, Jacob B. Ohligschlager. B2018, Mrs. Mary L. Ohligschlager. B2019, Mrs. Clara Oliver. B2020, Matthias R. Oliver. B2021, William A. Onderdonk. A2022, Kentucky Title Trust Co., Executor Estate Henry D. Ormsby. B2023, D. B. Osborne. B2024, Mrs. Katherine G. Osborne. B2025, Paul S. Osborne. A2026, Miss Nell Osbourn. B2027, Robert W. Osborn. B2028, Daniel E. O'Sullivan. B2029, H. E. Ottenheimer. A2030-1, William M. Otter and Nancy Otter Joyce, Executors of the will of Miss Jessie Dell Otter, deceased. A2032-3, William M. Otter and Nancy Otter Joyce, distributees. B2034, Miss Nell Otter. B2035, J. Albert Paradis. B2036, Miss Annie Mary Parker. B2037, Geo. H. Parker. A2038, Fidelity & Columbia Trust Company, Executor of the will of James C. Parker, deceased. B2039, Mrs. Minnie White Parker. B2040, Parrs Rest. B2041, Edgar M. Parsons. B2042, Mrs. Katherine M. Partee. B2043, Mrs. Jennie M. Patterson. B2044, Mrs. Lena Paull. B2045, Mrs. Rena W. Paull. B2046, Geo. L. Peabody. B2047, James R. Peabody, Jr. B2048, Mrs. Emma R. Peak.

B2049, Mrs. Mary McIntyre Pearce. B2050, Dr. Chas. S. Pearcy.

B2051, Chas. S. Pearcy. B2052, Miss Ruby L. Peery. B2053, Miss Mary E. Pell. B2054, Miss Anna F. Pendleton. B2055, W. O. Penick. B2056, Mrs. Ella O. Pepper. B2057-8-9, F. M. Perkins, D. B. Perkins, and F. M. Perkins, Jr., partners doing business under the firm name and style of F. M. Perkins and Sons. B2060, D. B. Perkins and F. M. Perkins, Jr., Executor of the will of F. M. Perkins, deceased. B2061, Roy T. Pernell. B2062-3, Roy T. Pernell and Hallie Pernell. B2064, Arthur Peter. B2065, Emil Peter. B2066, Mrs. Emelia Peters. B2067-8, Miss Mary A. Pettet and Margaret Pettet. B2069, Miss Sherley Gill Pettus. B2070, Mrs. Catherine Pfeiffer. B2071, Mrs. Margaret Hill Pfeiffer. B2072, Henry C. Pfingst. B2073, Henry C. Pfingst. B2074, Wm. Cook Pfingst. B2075, Alexander J. Pharr. A2076-7, Maud Phelps, Executrix and individually of the estate of George W. Phelps, deceased. B2078, Richard F. Piatt. B2079, Dr. Alice N. Pickett. B2080, W. J. Pierce. B2081-2, Chas. A. Pinnell and Dorothy Pinnell. B2083, Abbott B. Pinney, Jr. B2084, Miss Anne Pinney. A2085, Louisville Trust Company, Executor under the will of John B. Pirtle, deceased. B2086, Wm. B. Pirtle. B2087, Planters Bank and Trust Co., Agent for Grace T. Eubank. B2088, Planters Bank and Trust Co., Agent Bettie Lynes Estate. B2089, Wm. H. Plenge. B2090, Miss Lena Plouvier. B2091, Mrs. Genevieve D. Pogue. B2092, Genevieve D. Pogue, Executrix of the estate of Philip S. Pogue, deceased. A2093, Genevieve D. Pogue. B2094, August S. Pohl, Sr. A2095, Liberty National Bank and Trust Company, Administrator of the Estate of William C. H. Pohlman, deceased. B2096, Mrs. Cleo Seifrit Pollei. B2097, Mrs. Frances Polsgrove. B2098, Miss Mary Polsgrove. B2099, Miss Mary Elizabeth Polsgrove. B2100, Miss Nellie Polsgrove, now Nellie P. Maddox.

B2101, Winfred O. Polsgrove. B2102, Carlos A. Poole. B2103, Marns J. Pope. B2104, Robert E. Porter. B2105, Miss Martha Poston. B2106, Mrs. Georgia Poteet. B2107, Wm. O. Poteet. B2108, W. Otis Poteet. B2109, James V. Potter. B2110, Miss Josephine G. Potter. B2111, Mrs. Bertha C. Pottinger. B2112, Samuel C. Pottinger. B2113, Mrs. Alice Pound. B2114, Mrs. Elsie G. Powell. B2115, Mrs. Effie L. Powers. B2116, Hugh Powers. B2117, Charles H. Pratt. B2118, Miss Mary B. Pratt. B2119, Geo. C. Prell. B2120, Charles B. Price. B2121, Mrs. Florence H. Price. A2122-3, Dr. John W. Price, Jr., and Chas. B. Price, Executors of the estate of John W. Price, deceased. A2124, Charles Price, distributee. A2125, John W. Price, Jr., distributee. A2126, Violet B. Price, distributee. B2127, Melvin L. Price. B2128, James W. Proctor. B2129, Purchase Security Co., Inc. B2130, Hugo F. Quade. B2131, Mrs. Edna E. Quest. B2132, Miss Agnes Quick. B2133, Whayne S. Quin. B2134, Miss Mary L. Quinlan. B2135, Mrs. Cora E. Quinn. B2136, Philip F. Quinn. B2137, W. Embry Quinn. B2138, Irwin W. Quinsberry. A2139, Harry W. Rabenecker. A2140, Norbert J. Rademaker. B2141, Edward C. Langan, Administrator with the will annexed of George T. Ragsdale, deceased. B2142, Aris B. Rains, Jr. B2143, J. Russell Ramage. A2144, Charles K. Ramp. A2145, Mrs. Florence Ramp. A2146, Camille M. Ramser. B2147, George Ramser. A2148, Herbert A. Ramser. B2149, Vivian G. Ramsey. B2150, Robert W. Ramsier.

B2151, Marcus W. Randall. B2152, Mrs. Josephine Reed Randolph. B2153, Fidelity & Columbia Trust Co., Admr. w/a of estate of Fannie G. Rankin, deceased. B2154, Lallah M. Rapp. B2155, Fernand M. Rassinier. B2156, John B. Ratterman. A2157, Louis Rausch. B2158, Mrs. Marie Ray. B2159, Harry P. Reager. B2160, Edward I. Redding. A2161-2, Ida W. Redmon, Executrix of will of Clarence A.

Redmon, deceased, and Ida W. Redmon, Distributee. A2163-4, 2165-6-7, Guy Hardy Redmon, Andrew W. Redmon, Bennie S. Redmon, Katherine White Redmon, James E. Redmon, Distributees. B2168, James R. Redmon. B2169, Edgar W. Reed. B2170, Mrs. Frances Jones Reed. B2171, George Robert Reed. B2172, Mrs. Jennie Reed. B2173, Fidelity & Columbia Trust Company, Executor of the will of Mrs. Mary E. Reed, deceased. B2174, Herman B. & Barbara Reiling. B2175, John Reinhard. B2176, Miss Louise Reis. B2177, William A. Reisert. B2178, William A. Reisert, Exor. u/w Henry Besten. B2179, Alexander M. Reitzel. B2180, Kenneth H. Renau. B2181, W. Irwin Renau. A2182, Alva C. Renfrow. B2183, Thomas W. Retherford. A2184, Miss Margaret M. Renter. B2185, Miss Mary Renter. B2186, Adolph Reutlinger. B2187, Mrs. Myra O. Rice. B2188, Mrs. Alice A. Rich. A2189, Mrs. Gertrude K. Richard. B2190-1, Louisville Trust Company and Frank S. West, Executors of the will of Anne A. Richardson, deceased. B2192, Cleves Richardson. B2193, Daniel S. Richardson, Admr. of the estate of E. A. Richardson, Jr., deceased. B2194, Herbert L. Richardson. A2195, Mrs. Laura D. Richardson. B2196, Robert H. Rickert. B2197, Mrs. Mary Taylor Ricketts. B2198, J. Elliott Riddell. A2199, Ray Rider. A2200, John Riehl.

A2201, John Riehl. B2202, Stuart Riehl. B2203, William H. Rieke. A2204, Marguerite Riley. B2205, Peter J. Riley. A2206, Miss Viola Riley. B2207, Walter M. Riley. B2208, Fred H. Rink. B2209, Mrs. Addie H. Rippling. B2210, James B. Ripy. A2211, Mrs. William Victor Ritcher. A2212, Liberty National Bank & Trust Company, Executor & Trustee of the will of William Ritcher. A2213-4, 2215-6-7, Minnie L. Ritcher, Alonzo H. Ross, Jr., William Victor Ritcher, Jr., William Ritcher Ross, and Charlotte Ritcher Ross, Distributees. B2218, Eva A. Ritman. B2219, William J. Ritman. B2220,

Walter D. Roach. B2221, Jenny L. Robbins. A2222, Mrs. Barbara R. Roberts. A2223, Charles J. Roberts. B2224, Joseph A. Roberts. B2225, Alla May Roberts, Executrix of the will of D. Yandell Roberts, deceased. B2226, Mrs. Anna C. Robertson. B2227, Mrs. Anne C. Robertson. B2228, Mrs. Ella D. Robertson. B2229, Eugene B. Robertson. B2230, George A. Robertson. A2231-2, Eugene D. Hill and Helen P. Robinson, Executors of the will of A. Lee Robinson, deceased. A2233-4, Helen P. Robinson, and Lila Robinson Hill, Distributees. A2235, Fidelity & Columbia Trust Company, Executor of the Estate of Charles P. Robinson, deceased. A2236, Mrs. Ida E. Robinson. B2237, Joseph M. Robinson. B2238, Charles F. Rockwood. B2239, Irvin M. Rodde. A2240, John B. Rodes, Executor under the will of the Estate of Henry Clifton Rodes, deceased. A2241-2, 2243-4-5, John B. Rodes, Robert E. Rodes, Sallie Rodes, W. O. Rodes, and Helen Rodes, Distributees. B2246, Hugh Rodman; U. S. N., Admr. & Tr. B. B. Sayre, deceased. B2247, Joe A. Roehrig. A2248, Louisville Trust Company, Executor of the estate of Mayme A. Roehrig, deceased. B2249, Mrs. Lelia W. Roemele. B2250, Marie L. Rogers.

B2251, George J. Romiser. B2252-3, Dan Rommel and John M. Scott, Executors of the will of Edward D. Rommel, deceased. B2254, Daniel Rommel. B2252-3, Dan Rommel and John M. Scott, Executors of the will of Edward D. Rommel, deceased. B2255, Richard Rondi. B2256, Margaret Roper. B2257, Mrs. Elsa G. Ropke. B2258, Frank Ropke. B2259, Benjamin Rosenbaum. B2260, Mrs. Golda Rosenbaum. B2261, Harry Rosenbaum. B2262, Jesse Rosenbaum. B2263, Leon I. Rosenbaum. B2264, Samuel Rosenbaum. B2265, Mrs. Caroline Rosenberger. B2266, Mrs. Erma M. Rosenblum. B2267, Herman Rosenblum. B2268, Jacob Rosenheim. A2269, Jacob L. Rosenthal. B2270, Lafayette W. Ross. B2271, L. W. Ross. B2272,

Mrs. Matty H. Ross. B2273, Miss Anna C. Roth. B2274, Delphine Rothchild. B2275, Emanuel A. Rothschild. B2276, Mrs. Sadie Williams Rousseau. B2277, Anna M. Rowlett. B2278, Louis Rubel. B2279, Rudolph C. Ruff. B2280, William H. Ruff. A2281, Elizabeth Russell. B2282, Mrs. Ellie Russell. B2283, Fred A. Russell. B2284, George W. Russell. B2285-6, Harry W. & Rebecca R. Russell. B2287, Reuben Ruthenburg. B2288, Mrs. Susan B. Rutherford. B2289, Mrs. Rosalie W. Rutledge. A2290, Mrs. Rosalie W. Rutledge, Admx. of the estate of Arthur M. Rutledge, deceased. A2291, Joseph John Ryan, Executor of the Estate of Charles J. Ryan, deceased. A & B2292, Joseph J. Ryan. B2293, D. A. Sachs, Jr. B2294, Mrs. Esther S. Sachs. B2295, Fred M. Sackett. B2296, Mrs. Olive S. Sackett. B2297, Clarence H. Sadtler. B2298, Frank Sagalowsky. B2299, Miss Harriet B. Salin. B2300, Sam L. Salomon, Administrator of the Estate of Mrs. Jennie S. Salomon, deceased.

B2301, Sam L. Salomon. B2302, Elbert G. Samuel. B2303, Meyer Samuel. A2304, Elsie V. Samuell Glass, Administratrix of the estate of Foushe W. Samuel, deceased. B2305, Theodore O'Hara Samuels. B2306, Mrs. Anne Sanders. B2307, Cecil F. Sanders. A2308, Mrs. Eleanor B. Sanders. B2309, Hershel E. Sanders. A2310, Lillard Sanders as Guardian for Lillard D. Sanders, Jr., and David Sanders. B2311, Mrs. Winnie Graves Sanders. A2312, Laura G. Satterwhite, as Executrix of the estate of George G. Satterwhite. B2313, Susan Barr Satterwhite. B2314, William J. Sauer. B2315, Miss Elizabeth Sauter. B2316, Leroy P. Sauter. B2317, John L. Saylor. B2318, Joseph H. Stales. B2319, Amy G. Scanland. B2320, Mrs. Mary W. Schachner. B2321, Joseph S. Schaedler. A2322, William J. Schaedler. B2323, Mrs. Searphine M. Schaefer. B2324, George W. Schafer. B2325, F. S. Schardein & Sons, Inc. B2326, William F. Scharfenberger. B2327, Miss

Alexine Schaulie. B2328, Mrs. Cora B. Scheffer. B2329, Ida E. Scheffer, Executrix of will of Edward B. Scheffer, deceased. B2330, Albert Scheik. B2331, Mrs. Louise P. Scheik. B2332, Joseph J. Schene. B2333, William E. Schick. B2334, Soloman Schickli. B2335, Joseph Schildt. B2336, Miss Theodora Schildt. B2337-A & B, Catherine Schlachter Iredale and Margaret Schlachter McMahon, Executrices of the will of Mrs. Lorena Schlachter, deceased. A2338, Miss Lou Schlachter. B2339, Fidelity & Columbia Trust Company, Executor of the will of Mrs. Carrie F. Schlegel, deceased. B2340, Miss Margaret L. Schleeter. B2341, Mrs. Matilda Schlegel. B2342, William A. Schlenk. B2343, Robert C. Schmalz. B2344, Miss Louise Schmalzried. A2345, Miss Mary P. Schmalzried. B2346, George P. Schmid, Executor of will of Annie E. Schmid, deceased. B2347, Mrs. Flossie L. Schmidt. B2348, Lillie M. Schmidt. B2349, Werner W. Schmidt. B2350, Andrew S. Schmitt. B2351, Flossie L. Schmitt. B2352, Mrs. Helen C. Schmitt. B2353, Miss Magdalen Schmitt. A2354, Jacob J. Schnabel. B2355, Andrew Schneider. B2356, Chris J. Schneider. B2357, Catherine Strohman and Anna Bohon, Administratrices with the will annexed of the estate of Edward Schneider, deceased. B2358, Edward Schneider, Jr. B2359, Gilbert Schneider. B2360, John L. Schneider. B2361, Gilbert Schneider, Administrator with the will annexed of the Estate of Mrs. Ruby Schneider, deceased. B2362, Samuel J. Schneider. B2363, William Schneider. A2364, William C. Schneider. B2365, Mrs. Katie R. Schneiderhan. B2366, Max J. Schneiderhan. B2367, William Schnell. B2368, Alfred Schoen. B2369, Luther F. Scholl. B2370, William J. Schopp. B2371, Edw. Schoppenhorst. B2372, Mrs. Flora Schoppenhorst. B2373, Joseph J. Schrecker. B2374, Arthur T. Schreiber. A2375, Arthur T. Schreiber, Jr. B2376, Carl W. Schreiber. B2377, Miss Leah Schreiber. B2378, Mrs. Lulu Schreiber. B2379, William E. Schreiber.

B2380, Edwin A. Schroering. A2381, Miss Ada L. Schuberth. B2382, Margie Schubnell. B2383, Mrs. Bertha Schuhmann. B2384, Mrs. Lillian Schuler. B2385, William Schulman. B2386, Charles W. Schulz. A2387, Francis Schulz. B2388, Miss Loraine C. Schulz. A2389, Louis N. Schuster. A2390, Mrs. Emma Schwab. A2391, Irvin Schwab. B2392-3, Kentucky Title Trust Company, and Dora P. Schwab, Executors of the will of Joseph Schwab, deceased. B2394, Julius J. Schwab. B2395, Alex Schwabenton. B2396, Gregory Schweri. B2397, Walter A. Scott. B2398, Mrs. Fannie G. Scruggs. B2399, Millard J. Searcy. B2400, Mrs. Cornelia Seay.

B2401, Horace H. Seay. B2402, Theodore O. Secrest. B2403, Otto E. Seelbach. B2404, Miss Gertrude Seestadt. B2405, William R. Seestadt. B2406, Michael E. Segal. B2407, John F. Seger. B2408, George L. Schon. A2409, Sarah Wingfield Selby, Administratrix with the will annexed of the estate of Robert Carr Selby, deceased. A2410, Jennie K. Selligman, Executrix of the estate of Alfred Selligman, deceased. B2411, Bernard Selligman. B2412, Mrs. Florinne M. Selligman. B2413, Mrs. Jennie K. Selligman. B2414, Joseph Selligman. A2415, Francis T. Byars. A2416, Mrs. Emmett R. Fields. A2417, Lillian Truman. A2418-9, David O. Byars and Orville Truman, Executors of the estate of George C. Semple, deceased. B2420, Mrs. Lottie D. Semple. B2421, Mrs. Anna H. Settle. A2422, Robert Sewell. A2423, Walker W. Shadburne. B2424, Harry T. Shanks. B2425, Louis Shatz. B2426, Thos. J. Shaughnessy. B2427, Everett F. Shawler. A2428, Wm. M. Shawler. B2429, Cornell D. Shea. B2430, Jesse W. Shea. B2431, Miss Marguerite Sheehan. B2432, Miss Mary F. Sheehan. B2433, Mrs. Pearl G. Sheppard. B2434, Mrs. Bertha C. Sheridan. B2435, Elmore Sherman. B2436, Miss Alice Shinnick. B2437, Mrs. Kate Shinnick. B2438, Fred A. Shonkwiler. B2439, John Shores. B2440, Fidelity

& Columbia Trust Company, Executor of the will of Mary C. Short, deceased. A2441, Thomas L. Butler, Executor of the estate of Fannie S. Butler, deceased. A2442, Thomas L. Butler, Administrator de bonis non with the will annexed of the estate of William Short, deceased. A2443, Mary C. Short, Distributee. A2444, Lillian P. Shrader, Executrix of the estate of C. R. Shrader, deceased. B2445, H. U. Shrader. B2446, Leslie B. Shropshire. B2447, Warren P. Sights. A2448, Mrs. Louise B. Silliman. A2449, Charles Silliman. A2450, Samuel H. Simcoe.

A2451, Stella B. Simon, as Trustee under the will of Henry S. Simon, deceased. B2452, Jessie H. Simpson. B2453, Mrs. Mary F. Simpson. B2454, Sam H. Simpson. B2455, Dr. Virgil E. Simpson. B2456, Lester F. Sisloff. B2457, Mrs. Mary Gilmour Skillman. B2458, Orville T. Skillman. B2459, Mrs. Ethel R. Skinner. B2460, Miss Lina Skinner. B2461, Mrs. Sallie Slack. B2462, Miss Fanny Sleadd. A2463, John W. Smart. B2464, Clarence R. Smith & Co., Inc. A2465, Fred W. Smith. B2466, Guy B. Smith. B2467, H. Stanley Smith. B2468, Mrs. Lenore C. Smith. B2469, Mrs. Mamie W. Smith. B2470, Nellie E. Smith. A2471, Miss Nettie L. Smith. A2472, Torrens A. Smith. B2473, Uly H. Smith. B2474, William E. Smith. B2475, Mrs. Mary T. Smock. B2476, Mrs. Isabella Smyser. B2477, Thomas S. Snead. A-B2478, Ambrose J. Snider. B2479, Theodore C. Snively. A2480, Miss Mary Lynn Snodgrass. B2481, Horace B. Sowell. B2482, Miss Susanna Spada. B2483, Joe Spalding. B2484, Peter E. Spalding. B2485, Peter E. Spalding, Jr. B2486, H. H. Spangler. B2487, Joseph R. Spaninger. B2488, Joseph V. Spaninger. B2489, Henry P. Spatz. B2490, Harry T. Spaulding. B2491, Kimble E. Spears. A2492, H. Joe Specht. B2493, Ernest H. Speckman. B2494, Lawrence F. Speckman. B2495, William S. Speed. A2496, William S. Speed, Trustee for Virginia H. Speed. A2497, Virginia H.

Speed, Beneficiary. A2498, William S. Speed, Trustee for Alice Speed Stoll. B2499, Dr. Edward Speidel. B2500, Lemuel C. Spillman.

B2501, Louisville Trust Company, Executor of the will of Frank L. Spurgin, deceased. B2502, Mrs. Olive Spurling. B2503, Miss Jennie M. Staadeker. B-A2504, Jennie M. Staadaker, Executrix of the estate of Leon Staadeker, deceased. B-A2505, Jennie M. Staadeker. A2506, Louis A. Stack. B2507, Thomas J. Stahl. B2508, Miss Edith Stark. B2509, Mrs. Helen B. Stark. B2510, Isaac F. Starks. B2511, Millicent Starks. A2512, Aljean Starr Mendel, Administratrix of the estate of Emma G. Sachs Starr. A2513, Aljean Starr Mendel, Distributee of estate of Emma G. Sachs Starr, deceased. A2514, Mrs. Bertha Stebler. B2515, George W. Stege. B2516, Joseph C. Steidle. B2517, Frank Steier. A2518, Miss Lillie Steier. A2519, William J. Steier. B2520, Stein Bros. & Boyce (Milton S. Trost, Resident Mgr.). A2520, Milton S. Trost. B2521, Mrs. Hannah Steinau. B2522, Jerome L. Steiner. A2523, Aloysius J. Steltenpohl. B2524, Miss Anna Steltenpohl. B2525, Joseph C. Steltenpohl. A2526, Miss Catherine Stengell. B2527, William L. Stephan. A2528, Mrs. Ella Sterrett. B2529, Lester P. Stiebling. A2530, Carl M. Steeneker. A2531, Miss Evelyn Stieneker. B2532, Miss Mabel Stiles. B2533, Van A. Stille. A2534, Mrs. Ann Stilz. B2535, Edward H. Stilz. B2536, William A. Stilz, Sr. B2537, Miss Elizabeth Stites. B2538, Jarrett Stites. B2539, John Stites. A2540, Oscar Stocker. A2541, Kentucky Title Trust Company, Executor of the estate of Amelia Stockhoff, deceased. A2542, Mildred Meschendorf. A2543, Helen Buckner. A2544, Armistead M. Leigh, Executor of the will of Henrietta A. Leigh, deceased. A2545, Elsie Bader. B2546, Arthur B. Stockhoff. B2547, G. William Stockhoff. A2548-9, Arthur B. Stockhoff and the Kentucky Title Trust Company, Executors of the estate of

Herman H. Stockhoff, deceased. B2550, Mrs. Lucy Ann Stockhoff.

B2551, Mrs. Rosa Adelle Stockhoff. B2552, Mrs. Alvina Burg Stoecker. A2553, Louis Stoke, Jr. B2554, Earl M. Stokes. B2555, Mrs. Alice Speed Stoll. B2556, Miss Ella E. Stoll. B2557, Stanley W. Stopher. A2558, Miss Elizabeth P. Stouffer. A2559, Walter W. Stouffer. B2560, Harvey Stout. A2561, Mrs. Marion L. Stout. B2562, Morris Stout. B2563, Warden Stout. B2564, Harry K. Strassel. B2565, Harry A. Strater. B2566, Bertram H. Straus. A2567-8-9, Fannie S. Straus, Samuel L. Straus and Ludwig Frank, Trustees under the will of Ben Straus for Samuel L. Straus. B2570, Mrs. Fannie B. Straus. B2571, John L. Street, Executor of the will of Mary G. Street, deceased. B2572, Mrs. Fannie Henley Streng. B2573, Henry J. Streng. B2574, Jesse F. Streng. A2575, Eleanor Carter Strickler. B2576, Mrs. Anna Strobel. B2577, Mrs. Amelia R. Stroud. B2578, Arthur J. Strube. B2579, Charles Strull. B2580, Bishop M. Stuart. B2581, Mrs. Mary Bell Stuart. B2582, Mary Prewitt Stucky, Executrix of the will of Lane P. Stucky, deceased. B2583, Miss Clara E. Stuecker. A2584, Mrs. Florence Stultz. B2585, Arthur T. Sturgeon. B2586, James E. Sturgis. B2587, James L. Sublett. B2588, Miss Mayme Sullivan. B2589, Mrs. Margaret H. Surgener. A2590, Mrs. Louella N. Sutton. B2591, Mrs. Annie D. Swain. B2592, Miss Mary Lane Sweeney. B2593, Miss Eunice Sweets. A2594, Mrs. Anna Swift. A2595, Jeanette Payne Tabb, Executrix of the Estate of George Cary Tabb, deceased. B2596, Mrs. Jeannette P. Tabb. A2597, J. Preston Tabb. B2598, Mrs. Mary K. Tafel. A2599-2600, Louise Tafel and the Louisville Trust Co., Executors of the estate of William F. Tafel, deceased.

B2601, Carl G. Taffel. A2602, K. A. Tashgian, Executor of the will of Herbert Tashgian, deceased. A2603, K. A. Tashgian, Distributee. B2604, Billie N. Taylor. B2605,

Charles C. Taylor. A2606, E. Leland Taylor, Executor of the estate of Frances B. Taylor, deceased. B2607, Horace A. Taylor. B2608, Leonard W. Taylor. B2609, Mrs. Maggie H. Taylor. B2610, Major Taylor. B2611, Mrs. Pauline E. Taylor. B2612, T. Guthrie Taylor. B2613, Mrs. Susie E. Tellman. B2614, Adam Temple, Jr. B2615, Mrs. Bette Bright Tepe. B2616-7, Frank and Elsie W. Terhune. B2618, Mrs. Mayme P. Terry. B2619, Thomas Terry. B2620, Joe B. Tharp. B2621, Miss Mamie Theisen. B2622, Miss Norma Theisen. A2623, Albert C. Thiemann. B2624, Edward C. Thirwell. B2625, Frank J. Thoma. A2626, Fidelity & Columbia Trust Company, Administrator, Emily Thomas, deceased. A2627, Mrs. Ethel S. Thomas. B2628, Frank P. Thomas. B2629, Alexander B. Thompson. B2630, Calvin M. Thompson. B2631, Frank W. Thompson. B2632, Miss Helen Thompson. B2633, John C. Thompson. B2634, John C. Thompson, Admr. Nannie G. Thompson. B2635, Joseph W. Thompson. A2636, Mrs. Millie F. Thompson. B2637, Robert P. Thompson. B2638, Mrs. Sarah C. Thompson. B2639, Mrs. Alleene Thornberry. B2640, Mrs. Gertrude S. Thornberry. B2641, Murray H. Thornberry. B2642, C. O. Tice. B2643, Bert M. Tiffany. B2644, Mrs. Catherine Tighe. B2645, Edward V. Timmel. B2646, Eugene H. Timmel. B2647, Francis J. Timoney. B2648, Edward J. Tobe. B2649, Miss Elsie Tobe. B2650, Vincent G. Tobe.

B2651, Mrs. Josephine M. Toohey. B2652, Mrs. Frances E. Torian. B2653, Edward J. Tracy. B2654, Graham Davies, Executor of the will of Mrs. Launa Davies Trammell, deceased. B2655, Fidelity & Columbia Trust Company, Administrator of the estate of Thomas Trammell, deceased. B2656, John H. Trent, Jr. B2657, Mrs. Sarah R. Trent. B2658, H. L. Trimble. A2659, H. L. Trimble, Executor of the estate of Julia P. Trimble, deceased. B2660, Robert M. Trimble, Jr. B2661, Selden Y. Trimble. B2662, Selden

Trimble, Sr. B2663, John F. Trompeter. B2664, Harvey B. Troxler. B2665, Miss Carrie Trueheart. B2666, Charles T. Trueheart. A2667-8, Charles R. Trueheart and Carrie Trueheart, Co-executors of the estate of Mallie R. Trueheart, deceased. A2669-70, Orville Truman and Emmett R. Field, Executors of the estate of Harriet Semple Truman, deceased. B2671, Orville Truman. B2672, Jesse W. Tuley. B2673, Lawrence K. Tuley. B2674, Philip S. Tuley. B2675, Mrs. Floss O. Tully. B2676, Lee W. Tuney. B2677, Henry R. Turner. B2678, John N. Turner. B2679, Marshall Turner. B2680, Mrs. Mary L. Turner. B2681, Robert C. Tway. B2682, Clyde F. Twyman. B2683, Virginia W. Tyler. B2684, Fred W. Tyree. B2685, Miss Lillian M. Uhl. B2686, Wm. Ummethun. B2687, United States Trust Co. A2688, Ellen McDowell Davis, a distributee under the guardianship. B2689, U. S. Trust Co., Trustee for Anna C. Cowan. A2690-1, U. S. Trust Co. and David C. Morton, Trustees u/w of Mary B. Morton. B2692, Miss Emma Uri. B2693, Frayvol W. Urton. B2694, Robert L. Utterback. B2695, Mrs. Mary O. Utterback. A2696, Mrs. Susan VanArsdale. B2697, John VanAart. B2698, Donald P. Vandivier. B2699, Miss Frances VanNatta. B2700, Chas. VanOverbeke.

B2701, Miss Louise Van Overbeke. B2702, Julian P. VanWinkle. B2703, Benjamin Vaughan. B2704, J. Wallace Vaughan. B2705, Miss Cary M. Veach. B2706, C. Edward Veeneman. B2707, Mrs. Emma Veeneman. B2708, Carolyn Verhoeff. B2709, Mary Verhoeff. A2710, Edward H. Viglini, Administrator of the estate of Albert L. Viglini, deceased. A2711, John A. Viglini, Distributee. A2712, Edward H. Viglini, Distributee. A2713, Louis V. Viglini, Distributee. A2714, George J. Viglini, Distributee. A2715, Minnie D. Viglini, Distributee. A2716, Marcia V. Robertson, Distributee. A2717, Muriel Viglini, Distributee. A2718, Muriel Viglini, Executrix of the will of John A.

Viglini, deceased. B2719, Charles A. Villier. B2720, Miss Helen Vincent. A2721-2, H. Fred Vissman and Robert E. Vissman, Executors of estate of Mrs. Annie F. Vissman. B2723, Mrs. Catherine E. Vissman. B2724, J. Matt Chilton, Admr. of the estate of Louis Vissman, deceased. B2725, Hunter A. Vittitoe. B2726, Albert R. Vogel. B2727, F. Sherman Vogt. B2728, Harry A. Volz, Jr. B2729, Harry A. Volz, Sr. B2730, Mrs. Louise W. VonAllman. B2731, Mrs. Dena Vonderhaar. B2732, Miss Mary E. Vonderhaar. A2733, W. Oscar Votteler, Executor of the estate of William Votteler, deceased. A2734, Miss Lillian B. Wabnitz. B2735, Noble Waddy. B2736, Millard Waggoner. B2737, Anton Wagner. B2738, Frederick W. Wagner, Jr. A2739, Jemmie Wagner. B2740, Joseph C. Wagner. B2741, Mrs. Lola M. Wagner. B2742, William Wagner. B2743, Edward H. Wahking. A2744, Henry C. Wahking, Executor of the Estate of Elizabeth Wahking, deceased. A2745, Henry C. Wahking. B2746, E. H. Wahking, Administrator of the Estate of Mrs. Lillie Wahking, deceased. B2747, Robert C. Wahking. B2748, Henry P. Wahl. B2749, Joseph T. Wahl. B2750, Dunlap Wakefield.

B2751, Dunlap Wakefield & Co., Inc. B2752, Isaac N. Wakefield. B2753, Dr. J. J. Wakefield. B2754, Herman M. Waldman. B2755, Mrs. Herman Waldman. B2756, Mrs. Pearl Waldman. B2757, Mrs. Carrie L. Waldrop. B2758, Mrs. Florence W. Walker. B2759, H. Wallace. B2760, P. M. Wallace. B2761, James K. Waller. B2762, Mrs. Ruth M. Walling. B2763, Joe H. Wallingford. A2764, John Walsh, Jr. B2765, Maurice W. Walsh. B2766, John S. Walston. A2767, Miss Mary M. Walter. B2768, Ossian P. Ward. B2769, Mrs. Lula C. Warden. B2770, Mrs. Blanche C. Ware. B2771, Mrs. Henrietta M. Warfield. A2772, Mrs. Henrietta M. Warfield, Executrix of the Estate of R. F. Warfield, deceased. B2773, Clinton G. Warren. A2774, Fidelity & Columbia Trust Company,

Executor of the Estate of Edward L. Warren, deceased. B2775, Mrs. Elizabeth C. T. Warren. B2776, Harley H. Warren. B2777, Mrs. Idell G. Warren. B2778, Levi L. Warren. B2779, Ben F. Washer. B2780, Phillip Wasserman. B2781, Philip Wasserman. B2782, Miss Virginia H. Waters. B2783, Richard E. Wathen. B2784, George A. Weatherford. B2785, Harvey E. Weatherton. B2786, Miss Daisy E. Weaver. B2787, Louis K. Webb. B2788, Ben Weber. B2789, Franklin P. Weber. B2790, George A. Weber. B2791, William E. Weber. B2792, William V. Weber, Jr. B2793, Fidelity & Columbia Trust Co., Administrator of the Estate of George G. Wedding, deceased. B2794, Mrs. Dorothy Wedekind. B2795, Miss Edith Wedekind. B2796, Elmer H. Wedekind. B2797-8, Ruth Wedekind and Elmer H. Wedekind, Executors of the will of Mrs. Louise D. Wedekind, deceased. B2799, Ruth Wedekind. B2800, Henry Wehmhoff.

A2801, Mrs. Catherine Wehrley. A2802, Miss Alma Weikel. B2803, Mrs. Belle M. Weil. B2804, Jesse Weil. B2805, Mrs. Vivien R. Weil. B2806, Charles L. Weille. B2907, Mrs. Laura Weille. B2808, Philip Weinberg. B2809, George W. Weingardner. B2810-11, George Weingardner and Ida K. Weingardner. A2812, Mary A. Weinman, Executrix of the Estate of Edwin J. Weinman. A2813, Mary A. Weinman. B2814, Emanuel Weinstock. A2815, Rupert Weir, Executor of the Estate of William Weir, deceased. B2816, Fred B. Weis. B2817-8-9, Jacob F. Marx, Milton Grabfelder and Kentucky Title Trust Company, Executors of the will of Isaac A. Weis, deceased. B2820, Mrs. Carrie Weiss. B2821, Coleman G. Weiss. B2822, George A. Weiss. B2823, Mrs. Mary Weissman. B2824, Joseph Weissmueller. B2825, Frank J. Wellkamp. B2826, Mrs. Matilda Wellkamp. B2827, Darrell H. Wells. B2828, Fidelity & Columbia Trust Company, Executor of the will of Prince Wells, deceased. B2829, Miss Catherine M. Welsh. B2830, Miss Elsa Welsh. B2831, Herman,

Welsh. B2832, John H. Welsh. B2833, Bert F. Wempe. A2834, Elizabeth Wesch, Executrix of the Estate of Gustave A. Wesch, and A2835, Elizabeth Wesch, Distributtee. B2836, Edmund P. Wesley. B2837, Mrs. Anna S. Wessel. B2838, Frank S. West. B2839, Mrs. Addie M. Wetherby. B2840, Whayne Company, Inc. B2841, Louisville Trust Company, Executor of the will of Miss Dora Wheat, deceased. B2842, Mary Wheat. B2843, Mrs. Georgia B. Wheeler. B2844, Mrs. Minnie M. Wheeler. B2845, Mrs. Nettie K. Whelan. B2846, Richard J. Whelan. B2847, Richard J. Whelan. B2848, Richard J. Whelan, Jr. B2849, Clarence White. B2850, Miss Dora White.

B2851, Mrs. Ella E. White. B2852, Miss Etta H. White. B2853, Miss Mattie White. A2854, Mrs. Pearl Carter White. B2855, William C. White. B2856, Fred A. Whitehead. B2857, Mrs. Janet H. Whiteside. B2858, Kentucky Title Trust Company, Maurice Graham Whitley and Eugene W. Bright, Co-Executors of the Will of Andrew G. Whitley, deceased. B2859, Mrs. Mabel R. Whitley. B2860, John C. Wickliffe, Jr. B2861, John J. Wickstead. B2862, George F. Wiegandt. B2863, Walter G. Wiesman. A2864, Miss Mary L. Wiest. B2865, Mrs. Bessie L. Wigginton. B2866, Mrs. Bessie L. Wigginton. B2867, J Stoner Wigginton. B2868, Benedict J. Wight. B2869, Dow Wilcox. B2870, Benjamin F. Wilhoit. B2871, Frank L. Wilkerson. B2872, Edward Wille, B2873, Miss Elizabeth Wille. B2874, James S. Willett. B2875, Laura M. Willey. B2876, A Gilmore Williams. B2877, Mrs. Anna C. Williams. A2878, Mrs. Caroline M. Williams. B2879, Mrs. Elise L. Williams. B2880, Mrs. Ella C. Williams. B2881, Franklin P. Williams. B2882, M. Cartledge Williams. B2883, Richard G. Williams. B2884, Richard R. Williams. B2885, Mrs. Julia A. Willis. B2886, Mrs. Margaret Willis. B2887, Thomas N. Willis. B2888-9, 2890-1, James C. Wilson, Robert McBride, Henry T. Short, Otto C. Ruth, Jr., Partners doing business under the firm name and style of James C. Wilson.

& Co. B2892, Clarence R. Wilson. A2893-4, Thomas C. Wilson and B. Lester Wilson, Administrators of the Estate of George C. Wilson, deceased. B2895, Mrs. Kate R. Wilson. B2896, T. Bert Wilson. B2897, Tom C. Wilson. B2898, Wallace N. Wilson. A2899, Baruch Weinberg. B2900, Mrs. Lily R. Windell.

A2901-2, W. Edward Winkler and George Schmid, Executors of the estate of Fred W. Winkler, deceased. A2903, Kentucky Title Trust Company, Executor of the estate of Mary E. Winston, deceased. A2904, Nancy Hite Winston. A2905, Henrietta B. Winston. A2906, Joseph Bond Winston. B2907, Tom M. Wintersmith. A2908, Karl H. Lang, Administrator of the estate of Miss Clara May Wirth; deceased. A 2909, Emma C. Wirth, Distributee. B2910, Karl F. Wirth. B2911, Mrs. Emma C. Wirth. B2912, Louis K. Wirth. B2913, Mrs. Mary Wirth. B2914, Louis P. Wiseman. B2915, L. Frank Withers. B2916, Mrs. Elnora M. Witting. B2917, Mrs. Heloise Wolf. B2918, Joseph C. Wolf. B2919, Claude T. Wolfe. B2920, George M. Wolff. B2921, Michael B. Segal, Administrator of the estate of Gustave B. Wolff, deceased. A2922, Miss Ida May Wolff. B2923, Leander E. Wolff. B2924, Allen W. Wolpert. B2925, A. W. Wolpert. B2926, Miss Annie B. Wood. B2927, Lucie Poucher Wood, Executrix of the will of Edwin D. Wood, deceased. B2928, Mrs. Ellen B. Wood. B2929, Fidelity & Columbia Trust Company, Administrator with the will annexed of the estate of George R. Wood, deceased. A2930, Thomas J. Wood, Executor of the estate of Lizzie B. Wood, deceased. A2931-2, Thomas J. Wood and Helen L. Wood, Distributees. B2933, Walter E. Wood. B2934, Harry C. Woodard. B2935, Charles E. Woodcock. B2936, Woodford Bank & Trust Company, Trustee under the will of Katherine Rout McCord. A2937, Gray Maxwell Woodruff, Executrix of the estate of Alex M. Woodruff, deceased. B2938, George E. Woodruff. B2939-40-1, The Louisville Trust Company; Richard Priest Dietzman and

Clara E. Woodson, joint Executors and Executrix of the will of Isaac T. Woodson, deceased. B2942, Fidelity & Columbia Trust Company, Executor of the estate of Urey Woodson, deceased. B2943, Woodson and Kratch Monument Company, Inc. A2944, John Marshall, Jr., Executor of the estate of Clementine V. Woodward, deceased. B2945, Harry C. Woodard. B2946, Mrs. Margaret L. Woody. B2947, William C. Woolridge, Sr. A2948, Matalea Mourning Bickel, Executrix of the estate of Mrs. Fanny Owen Woolfolk. B2949, George G. Worland. B2950, Rowan B. Wornall.

B2951, Harry A. Wortham. B2952, Charles C. Wren. B2953, Wright & Taylor. B2954, Mrs. Clara H. Wulf. B2955, Mrs. Lavinia Wurtele. B2956, Ira B. Wyatt. B2957, Joseph J. Wynn. B2958, Mrs. Virginia Quarrier Wynn. B2959, T. Grayson Yancey. B2960, Geo. A. Yenner. B2961, Mrs. Carrie B. Young. B2962, Mrs. Eliza S. Young. B2963, Mrs. Irene Taggart Young. B2964, James B. Young. B2965, Miss Mildred E. Young. B2966, Mrs. Utley B. Young. B2967, William Blue Young, Executor of the will of William B. Young, deceased. B2968, Mrs. Emma Youngblood. B2969, Theo. L. Zabel. B2970, Mrs. Lucille Zell. A2971, Carl W. Zellner, Executor estate Belle W. Zellner, deceased, and 2972-3, Carl W. Zellner, individually, and Henrietta Zellner Nairin. B2974, Theodore Zervos. A2975, Miss Mary Irene Zinniger. B2976, Andrew C. Zoeller. A2977-8, 9-80, John Zoll, Executor estate Helen A. Zoll, deceased, and Mary E. Goebel and John Zoll, and Carl A. Zoll. B2981, Mrs. Amelia Zutt. B2982, Mrs. Mary M. Dockweiler, Administratrix with the will annexed of the estate of John S. Dockweiler, deceased. B2983, Lula Adams Mackin, Executrix of the will of William Leonard Mackin, deceased. B2984, Govriel L. Rosenthal, Executor of the will of Mrs. Lucille W. Rosenthal, deceased. B2985, Elizabeth Shepherd Will, Executrix of the will of William Will, deceased.

Bill of Complaint
**RECORD OF PROCEEDINGS
IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
WESTERN DISTRICT OF KENTUCKY
IN THE ABOVE ENTITLED CAUSE**

BILL OF COMPLAINT

(Filed February 17, 1936)

The caption, listing all defendants, and "Exhibit A," listing their shareholdings and alleged assessments, are omitted.

I

The National Bank of Kentucky is a national banking association organized under the laws of the United States, commonly known as the National Bank Act, and is domiciled at Louisville, Jefferson County, in the Western District of Kentucky.

II

Said Bank was closed by resolution of its Board of Directors on the 16th day of November, 1930.

III

Thereafter on November 17, 1930, the Comptroller of the Currency of the United States, being satisfied from information on file in his bureau, that said National Bank of Kentucky located in the City of Louisville, County of Jefferson and State of Kentucky, was insolvent and unable to pay its just and legal debts, and in pursuance of the power and authority vested in him by law and under the provisions of Section 1 of the Acts of Congress,—“An act authorizing the appointment of receivers for national banks

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and other purposes," approved June 30, 1876, appointed Paul C. Keyes Receiver of said National Bank of Kentucky with all the powers, duties and responsibilities given to or imposed upon a Receiver under the provisions of the Revised Statutes of the United States which authorize the appointment of a receiver. Said Paul C. Keyes thereupon duly qualified and entered upon the duties of his office as such receiver and took possession of all of the books, records and assets of said Bank and continued in the possession and control thereof as such Receiver until December 15, 1932, on which date he resigned. Thereafter on December 15, 1932, F. G. Awalt, then acting Comptroller of the Currency pursuant to the power and authority vested in him by law as aforesaid, appointed the plaintiff, A. M. Anderson, Receiver of said National Bank of Kentucky with all the powers, duties and responsibilities given to or imposed upon a receiver under the provisions of the Revised Statutes of the United States which authorize the appointment of a receiver, and the said plaintiff forthwith qualified and thereupon entered upon the duties of his office as such Receiver, took possession of all of the books, records and assets of said Bank. Plaintiff still is in the possession and control thereof as such Receiver and is still the duly appointed, qualified and acting Receiver of said The National Bank of Kentucky.

IV

This is a suit of a civil nature in equity brought by the plaintiff as receiver of an insolvent national bank. As such receiver he is an officer of the United States. This suit arises under the constitution and laws of the United States for the enforcement of a liability imposed by the laws of the United States and is brought in performance of his official duties. This is a case for winding up the affairs of a national banking association.

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This suit is brought in equity for the reason that the plaintiff does not have an adequate remedy at law because an accounting is necessary and prayed for herein to determine the proportionate part of the aggregate liability claimed against the defendants named herein for which each individual is severally liable and to determine the credit to which the defendants may be entitled, if any, by reason of the collections made by the plaintiff on account of the statutory liability hereinafter set forth. The matters set forth herein involve complicated interests and degrees of interest among approximately six thousand stockholders of Banco Kentucky Company hereinafter described and to require the plaintiff to proceed at law would involve several thousand independent actions in which the defendants and all of said stockholders have a common interest. The equitable determination in one action of the questions of common interest will avoid a multiplicity of suits and circuity of actions and the unreasonable expense of thousands of separate suits which would dissipate the trust fund herein sought to be recovered for the benefit of creditors of said Bank, and unless the plaintiff is granted the relief in equity as prayed for herein, he will suffer irreparable damage and injury.

On account of all of which the plaintiff has no adequate remedy at law and this court has jurisdiction of this suit.

V

The defendants are named in the caption hereof and the names of said defendants are incorporated in the body of this complaint by reference to the caption hereof, the same as if fully set forth herein and are not repeated to prevent unduly encumbering the record.

The individual defendants are citizens and residents of the State of Kentucky and the Western District of Kentucky.

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The corporate defendants are either corporations organized and existing under the laws of the State of Kentucky or are corporations organized and existing under the laws of other states which have qualified to do business in the State of Kentucky and are engaged in business therein.

Certain defendants are sued in a representative capacity, as fully set forth in the caption incorporated herein by reference thereto, and as such are residents of the Western District of Kentucky and said defendants are acting in said representative capacity at the present time and proof of claim properly verified for the amounts due him, as hereinafter set out, have been filed with each of said representatives and payment of same has been demanded of each of said defendants and plaintiff states that the claims herein sued on are a just demand against said respective estates, and have never been paid and that there is no offset or discount against same or any usury therein.

VI

On or about the 20th day of February, 1931, J. W. Pole, as the Comptroller of the Currency of the United States, upon an accounting by Paul C. Keyes as Receiver of the National Bank of Kentucky, and upon a valuation of the uncollected assets of said Bank remaining in the hands of Paul C. Keyes as Receiver, found to the satisfaction of the Comptroller of the Currency that in order to pay the debts of the National Bank of Kentucky, it was necessary to enforce the individual liability of the stockholders thereof to the extent hereinafter mentioned as prescribed by Sections 5151 and 5234 of the Revised Statutes of the United States, Section 1c156, Act of June 30, 1876 and Section 23, Act approved December 23, 1913 known as the Federal Reserve Act, and said Comptroller of the Currency, by virtue of the authority vested in him by law, did therefore

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levy and make an assessment and requisition upon the shareholders of said The National Bank of Kentucky for \$4,000,000.00, to be paid by them on or before the First day of April, 1931, and did make demand upon each and every one of them for the par value of each and every share of the capital stock of said association held or owned by them respectively, at the time of its failure; and said Comptroller of the Currency did thereupon direct the Receiver of the National Bank of Kentucky to take all necessary proceedings by suit or otherwise to enforce the individual liability of said shareholders.

VII

At the time of the closing of the National Bank of Kentucky, it had issued and outstanding 40,000 shares of capital stock of the par value of \$100 each, and 39,820 of said shares were held by Henry Vogt, Thomas J. Minary, Stewart E. Duncan, Allen P. Dodd, Charles H. Bohmer and Ben J. Metcalfe, as Trustees under a certain trust agreement dated April 22, 1927, entered into between the owners and holders of the capital stock of the National Bank of Kentucky and the owners and holders of the capital stock of the Louisville Trust Company. At the time of the closing of the National Bank of Kentucky, in addition to the stock of the National Bank of Kentucky, the above mentioned Trustees held under the same trust agreement 17,235 shares of the capital stock of the Louisville Trust Company.

VIII

Pursuant to the terms of said trust agreement, the above mentioned trustees issued to each stockholder of the National Bank of Kentucky and to each stockholder of the Louisville Trust Company whose stock was deposited with said trustees, a transferable Trustees Participation Certifi-

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cate having a par value of \$100 in lieu of each share of stock of the bank or trust company having a par value of \$100. Said Trustees Participation Certificate certified that the holder was the owner of shares of stock of the par value of \$100 each, of the indivisible trust estate consisting of the shares of the capital stock of the National Bank of Kentucky and the Louisville Trust Company and of any other corporation acquired by the trustees under the agreement between the stockholders of said institutions previously described. This certificate was issued under the terms of the aforesaid agreement and the holder thereof, by accepting the same, consented to and adopted the terms of the certificate and the terms of the agreement, as if fully written in said certificate.

Subsequent to April 22, 1927, each share of the trust estate having a par value of \$100 per share, was divided into ten shares of the trust estate, each having a par value of \$10.00 per share but except for the change in par value, said Trustees Participation Certificates remained unchanged and were issued under and subject to the trust agreement dated April 22, 1927.

Each Trustees Participation Certificate having a par value of \$10.00 represented .0697923 of a share of the capital stock of the National Bank of Kentucky, having a par value of \$100 per share.

IX

Each and every Trustees Participation Certificate contained on the face thereof a statement that it was issued pursuant to the trust agreement of April 22, 1927 which was recited to be on file with said National Bank of Kentucky and each and every Trustees Participation Certificate contained on its face the further agreement assented to by the holder thereof and reading as follows:

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"This certificate is issued under the terms of the aforesaid agreement and the holder hereof by accepting same, consents to and adopts said terms as if fully written herein."

One of the terms of said trust agreement of April 22, 1927 to which the above assent was given by the holders of Trustees Participation Certificates, read as follows: -

"(1) The Trustees shall not be responsible for any acts done by them as Trustees in good faith and in the exercise of an honest judgment. No Trustee shall be liable for the act or omission of another Trustee.

"(2) They shall not be liable, except as Trustees to the extent of the Trust funds held by them by reason of the ownership of stock in any corporation. They shall be indemnified against any such liability by each holder of Trustees' Participation Certificates to the extent hereinafter set forth.

"(3) Each owner of a Trustees' Participation Certificate issued hereunder shall be subject to the same liability thereon as he would have been subject to in case he had been the owner of record of such proportionate part of the shares held by the Trustees in any corporation as the number of shares called for by his Trustees' Participation Certificate bears to the whole number of shares covered by all outstanding Trustees' Participation Certificates; and to such extent he shall indemnify and hold harmless the Trustees owning such stock from any loss or liability on account of being the holders or owners thereof. The measure of liability assumed hereunder shall be the same as that provided by law with reference to the holders of stock in any particular corporation in which the Trustees may hold stock as is provided by law with reference to the holders of such stock, and no more."

X

At the time of the closing of the National Bank of Kentucky as aforesaid, there were issued and outstanding

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570,550 shares of the trust estate having a par value of \$10.00 per share, and said shares represented 39,820 shares of the capital stock of the National Bank of Kentucky having a par value of \$100 per share.

XI

On or about July 19, 1929 the officers and directors of the National Bank of Kentucky and the officers and directors of the Louisville Trust Company and the Trustees under the trust agreement of April 22, 1927, proposed to the holders of said Trustees Participation shares of the National Bank of Kentucky and the Louisville Trust Company, that the two banks and the business conducted by them should be reorganized by adding to this group a third corporation which said officers, directors and trustees represented would make the operations of these banking institutions more profitable, and expand their facilities for the profit of the shareholders of said banks. The plan of reorganization proposed by the officers and directors of the two banks and approved by formal resolutions of the trustees under the trust agreement of April 22, 1927 was to organize under the laws of the State of Delaware, a holding corporation to be known as the BancoKentucky Company, with an authorized capital of 2,000,000 shares having a par value of \$10 each and to exchange the stock of this holding corporation for stock of the bank, represented by the Trustees Participation Certificates on the basis of two shares of the stock of said holding corporation, the BancoKentucky Company, for each Participation share.

The Trustees Participation shareholders were advised that it was an essential part of the plan that the shares of this holding corporation, the BancoKentucky Company (or at least a substantial majority thereof) be owned by the Trustees Participation shareholders and that it be man-

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aged and operated by the boards of directors and officers of the two banks. The holders of 570,550 shares of the trust estate approved and adopted the plan above described and the holders of 540,384 shares of the trust estate representing 37714.6422 shares of stock of the National Bank of Kentucky exchanged their Trustees Participation Certificates which represented the stock of National Bank of Kentucky and the Louisville Trust Company, for 1,080,768 shares of the holding company, BancoKentucky, which shares continued thereafter to represent the holders' interest in said bank stock,

XII

Pursuant to the above described plan, the holders of the Trustees Participation shares representing approximately 95% of the stock of the National Bank of Kentucky and the Louisville Trust Company, caused said holding corporation to be organized as their agency and instrumentality, for their own use and enrichment and in furtherance of a scheme to engage in unlawful acts and to enable them through said corporate agency and instrumentality unlawfully to acquire, own, hold, control and operate a group of state and national banks and trust companies contrary to and in defiance of the meaning, spirit and intent of the laws of the United States and of the Commonwealth of Kentucky and other states relating to the ownership, operation and supervision of banks and trust companies.

Accordingly said holding corporation, the BancoKentucky Company was incorporated under the laws of the State of Delaware on July 16, 1929 with an authorized capital of 2,000,000 shares of common stock of the par value of \$10 each for the alleged purposes set forth in its articles of incorporation as follows: •

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"The acquiring by purchase or otherwise of all or any portion of the capital stock, property, assets and franchises of any or all corporations transacting business in any state of the United States; the purchasing, holding, selling, assigning, transferring, mortgaging, pledging or otherwise disposing of shares of the capital stock of or any bonds, securities or evidence of indebtedness created by or issued by any other corporation or corporations organized under the laws of any State of the United States or of any foreign country and while the owner thereof to exercise all the rights, powers and privileges of ownership the purchasing or otherwise acquiring of any promissory notes or other evidences of indebtedness executed by any person, firm, association or corporation; the financing managing or operating of any commercial or manufacturing business or enterprise; the underwriting of any issue of stocks, bonds, debentures or other securities issued by any corporation; the charging of fees or commissions for any or all services rendered or advice or assistance given to any person, firm, association or corporation; acquiring and paying for in cash, stock or bonds, of this corporation or otherwise, the good will, rights, assets and property of any person, firm, association or corporation and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm or corporation.

"The corporation shall have power to act as registrar or transfer agent for any other association or corporation and to act as agent in general for any other person, firm, association or corporation.

"The corporation shall have full power to issue bonds, debentures or obligations of this corporation from time to time, for any of the objects or purposes of the corporation and to secure the same by mortgage, pledge, deed of trust or otherwise. The corporation shall have full power to purchase, hold, sell and transfer the shares of its own capital stock, provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would

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cause any impairment of its capital; and provided, further, that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

"The corporation shall have full power to guarantee the obligations of any other person, firm, association or corporation and to become surety therefor and to become joint maker, endorser or acceptor of any such obligations and to charge fees and commissions for such services.

"The corporation shall have full power without restriction or limit as to amount to purchase or otherwise acquire, hold, own, mortgage, sell, convey or otherwise dispose of real and personal property of every class and description in any of the States of the United States, or any foreign country, subject to the laws of such States or foreign countries.

"In general, the corporation shall have full power to carry on any other business in connection with the foregoing whether commercial, manufacturing, financial or otherwise, and to have and exercise all the powers conferred by the laws of Delaware upon corporations formed under the act hereinafter referred to and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

"The foregoing clauses shall be construed both as objects and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to that limit or restrict in any manner the powers of this corporation."

XIII

The defendants and other shareholders of said banks in carrying out the plan and scheme aforesaid through the agency and instrumentality of their holding corporation, the Banco Kentucky Company, proceeded unlawfully to acquire, own, hold, control and operate a group of state and national banks and trust companies contrary to and

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in defiance of the meaning, spirit and intent of the laws of the United States and of the Commonwealth of Kentucky and of other states relating to the ownership, operation and supervision of banks and trust companies and unlawfully to use the assets of said banks and trust companies in speculative financial transactions prohibited by law, and unlawfully to use the assets and property of one or more of said banks in making loans on the security of the holding company stock in violation of law.

XIV

After the aforesaid exchange of Trustees Participation Certificates for stock of the holding corporation, the Banco-Kentucky Company, the holders of the stock of the Banco-Kentucky Company continued to be the actual, real and beneficial holders of approximately 95% of the stock of the National Bank of Kentucky and continued after the organization of the holding company, to receive all of the benefits and advantages incident to the ownership of stock in said National Bank.

XV

At the time of the organization of the BancoKentucky Company and at all times thereafter, the persons who appeared as stockholders of the said company exercised all the rights and privileges of shareholders of the National Bank of Kentucky and of the other banks and trust companies whose capital stock, was held by BancoKentucky. Said persons who appeared as stockholders of BancoKentucky secured and retained to their own use and enrichment all the benefits and advantages of shareholders of the National Bank of Kentucky and were from the time of the organization of the BancoKentucky Company up to the time of the closing of the National Bank of Kentucky the

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real, actual and beneficial owners of the Trustees Participation Certificates which represented shares of stock of the National Bank of Kentucky.

From the time of its organization to the date of the closing of the National Bank of Kentucky, the BancoKentucky Company acted as a corporate agency and instrumentality for the persons whose names appeared as stockholders of said company and as such corporate agency and instrumentality for said owners of the said BancoKentucky Company stock it held the Trustees Participation Certificates which represented the shares of stock in the National Bank of Kentucky and the persons whose names appeared as stockholders of the BancoKentucky Company were the actual, real and beneficial owners of the stock of the National Bank of Kentucky.

XVI

The holders of the Trustees Participation Certificates who organized the BancoKentucky Company as a holding corporation for their bank stock, well knowing that said bank stock was subject to the individual liability of shareholders of national banks, imposed by the Acts of Congress, Sections 5151 and 5234 of the Revised Statutes of the United States and knowing that bank stock of state banking institutions was subject to individual liability imposed by state laws, nevertheless, in the organization of the said BancoKentucky Company, intentionally undertook to evade the provisions of said sections of the Acts of Congress by deliberately omitting from the Articles of Incorporation any provision for the payment of the liability upon national and state bank stocks provided by the laws of the United States, the Commonwealth of Kentucky and other states, and deliberately and intentionally sought to evade said liability by including the Articles of Incorporation of BancoKentucky Company the following language:

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"VIII. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever,"

and by printing in its certificates of stock the words "full paid and non-assessable," and in so attempting to evade such assessment liability perpetrated a fraud upon the depositors and creditors of the National Bank of Kentucky for whose benefit this action is brought.

XVII

By reason of all of the foregoing, the defendants are not entitled in equity and good conscience to the immunity recognized by law which stockholders of a bona fide lawfully formed and conducted corporation ordinarily have and defendants are not entitled in equity and good conscience to shield themselves from the assessment imposed upon them by law with said corporate form the Banco-Kentucky Company. By reason of the foregoing, the defendants are the real, true and beneficial shareholders of the National Bank of Kentucky and have promised to pay said assessment and are stopped to deny said assessment liability, and are the owners of shares of stock of the National Bank of Kentucky and each of the defendants appearing to be stockholders of the Banco-Kentucky Company is liable for the payment of the assessment levied by the Comptroller of the Currency hereinbefore referred to, individually, ratably and proportionately to the extent that the number of shares of stock held by him bears to the total number of shares issued and outstanding.

XVIII

Acting pursuant to the authority and direction of the Comptroller of the Currency, the Receiver of the National Bank of Kentucky, on or about March 20th, 1931, sent and

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served upon each of the defendants and all the other shareholders of the BancoKentucky Company, the following assessment notice:

“Office of The Receiver

THE NATIONAL BANK OF KENTUCKY

Louisville, Kentucky

Louisville, Ky., March 20, 1931

“As a stockholder in The BancoKentucky Company, you will please take notice, that the Comptroller of the Currency has on February 20, 1931, levied an assessment upon the stockholders of The National Bank of Kentucky, Louisville, Ky., on the par value of each and every share, payable at the Office of the Receiver, on or before April 1, 1931. A notice of such assessment and a demand for payment of the same has been served upon the Receiver of The BancoKentucky Company as the holder of 540,484 trustees' participation certificates, issued under a certain trust agreement of April 22, 1927, which trustees' participation certificates represent the ownership of 37,721.624 shares of stock in The National Bank of Kentucky. You will, therefore, take notice that it is the intention of the undersigned, as Receiver of The National Bank of Kentucky, to proceed against you for the collection of the aforesaid assessment liability represented by the said trustees' participation certificates held by said BancoKentucky Company, to the extent that the undersigned, as Receiver of the National Bank of Kentucky, is unable to collect said assessment from The BancoKentucky Company or its Receiver.

Paul C. Keyes

RECEIVER OF THE NATIONAL BANK OF KENTUCKY

Louisville, Kentucky

Registered Letter
Return Receipt Requested.”

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Enclosed therewith and attached thereto was a copy of the order of assessment upon shareholders made by the Comptroller of the Currency of the United States hereinabove described.

XIX

Thereafter, the receiver of the National Bank of Kentucky secured leave of the Jefferson County Circuit Court, which had previously appointed a receiver for the Banco-Kentucky Company, to file an action against the receiver of the Banco-Kentucky Company to collect said assessment and leave having been secured, the receiver, on October 31, 1931, filed an action in this court against Joseph S. Laurent, Receiver of the Banco-Kentucky Company, praying for judgment by reason of the assessment in the amount of \$3,772,162.40. Said cause being docketed in the United States District Court for the Western District of Kentucky as No. 1383. Thereafter, the cause was heard and on September 14, 1932, the Receiver of the National Bank of Kentucky recovered judgment for the full amount of the assessment, plus interest at the rate of six per cent (6%) per annum. Said judgment was entered September 14, 1932. Said judgment has been affirmed by the United States Circuit Court of Appeals and said judgment has become final and except for a credit of \$90,745.17 hereafter described is wholly unpaid and unsatisfied.

XX

On December 18th, 1934, the Receiver of the Banco-Kentucky Company paid to the plaintiff, as Receiver of the National Bank of Kentucky, the sum of \$90,745.17, said payment being made to plaintiff as a creditor of Banco-Kentucky Company by reason of the judgment mentioned above and said payment is the only money paid to the

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plaintiff on account of the judgment for stock assessment up to the present time. The plaintiff says that there are other moneys which he may collect from the Receiver of the BancoKentucky Company, before the assets in the hands of said Receiver are completely exhausted, but plaintiff says that there are numerous controversies with respect to the distribution of the assets of the BancoKentucky Company and says that for this reason he is unable to state at the present time what if any further sum may eventually be paid by the Receiver of the BancoKentucky Company on account of said judgment, but plaintiff alleges that BancoKentucky Company is hopelessly insolvent and any payment that might be made will be relatively small and that said judgment will remain substantially unsatisfied.

S

XXI

Plaintiff says that the depositors and creditors of the National Bank of Kentucky have only been paid up to the present time, sixty-seven (67%) per cent of the face amount of their deposits and claims.

XXII

Plaintiff further says that there is due him as Receiver of the National Bank of Kentucky by reason of the stock assessment on the 37,714.6422 shares of National Bank of Kentucky stock held by the BancoKentucky Company as the agency and instrumentality of the defendants and other shareholders of said company, and in accordance with their plan adopted as aforesaid, the sum of \$3,771,464.22, less \$90,745.17 paid on December 18th, 1934.

XXIII

On January 14th, 1930, the Articles of the BancoKentucky Company were amended and the authorized capital stock in said company was increased from 2,000,000 to

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5,000,000 shares, each share having a par value of \$10.00. At the time of the closing of the National Bank of Kentucky, there were issued and outstanding 2,072,468 shares of the capital stock of the BancoKentucky Company.

XXIV

Each of the defendants and each stockholder of the BancoKentucky Company not named a defendant herein is individually liable to pay said assessment in the proportion that his shares of stock of the BancoKentucky Company bears to the total number of shares of the BancoKentucky Company issued and outstanding at the date of the closing of the National Bank of Kentucky. The plaintiff is informed and believes that the sum due from each stockholder of BancoKentucky Company, including interest to the date of the filing of this petition, amounts to approximately \$2.304909 for each share of stock of the BancoKentucky Company registered in his name or owned by him at the time of the closing of the National Bank of Kentucky.

XXV

The several defendants named herein are holders of the number of shares of BancoKentucky Company stock set opposite their respective names on the schedule and list hereto attached, made a part hereof, and marked "Exhibit A," and are each indebted to the plaintiff as Receiver of the National Bank of Kentucky in the estimated amounts set opposite their respective names on said Schedule A, in the column thereof designated "Amount of Assessment," together with interest at the rate of six per cent (6%) per annum.

XXVI

Plaintiff therefore prays:

1. That a subpoena be issued according to the course and practice of this court, requiring the defendants to appear

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and answer this Bill of Complaint, but not under oath, answer under oath being hereby expressly waived according to the rules and practice of this court.

2. That an accounting be made and stated to determine the number of shares of the stock of BancoKentucky Company that were issued and outstanding at the date of the failure of the National Bank of Kentucky; to determine the number of shares of the capital stock of the National Bank of Kentucky that were represented by the Trustees Participation Certificates held by the BancoKentucky Company as the agency and instrumentality of the defendants and the other stockholders of the BancoKentucky Company; to determine the proportionate part of a share of stock of the National Bank of Kentucky which was represented by a share of stock in BancoKentucky Company; to determine the proportionate amount of the assessment for which each holder of the stock of the BancoKentucky Company is liable giving due and proper credit to said defendants and the other stockholders of BancoKentucky Company for such part of the assessment that the Receiver has collected, or may hereafter collect, and for which said defendants and other shareholders are entitled to credit.

3. That the court fix and determine the number of shares of National Bank of Kentucky stock of which the several defendants were the real and beneficial owners, and the assessment liability thereon, and that upon such accounting, the plaintiff be awarded a judgment and decree against the several defendants for the amount, by said accounting found to be due from each of them.

4. That plaintiff may have such further, other and different relief in the premises to which he may be entitled, and as shall be agreeable to equity and good conscience.

[Verification omitted]

*Amended and Supplemental Bill of Complaint***AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT**

(Filed March 28, 1936)

The allegations of the original Bill and "Exhibit B," attached to the Amended Bill and listing defendants therein named, their BancoKentucky shareholdings and their alleged assessments, are omitted.

Said amendment sets forth 195 separate paragraphs each alleging that the person or company therein named had been appointed the personal representative of some person who had appeared as record owner of BancoKentucky Company stock at the time of the closing of the Bank, that distribution of such shareholder's estate had been made to named distributees and that liability was asserted against such personal representative and such distributees.

The following are typical paragraphs from said Amended and Supplemental Bill of Complaint:

"PARAGRAPH 2

Plaintiff states that at the time of the closing of the National Bank of Kentucky, as hereinbefore stated, Charles C. Mengel was the owner and holder of 5,760 shares of stock of BancoKentucky Company; since that time said Charles C. Mengel died and Arthur D. Allen was appointed Executor of his estate and proof of claim has been filed with said Executor. Plaintiff states that by reason of the foregoing, the defendant, Arthur D. Allen, Executor, is indebted to the plaintiff in the amount set out in Item 25 of Exhibit 'A' of the original Bill of Complaint." (Amended and Supplemental Bill of Complaint.)

"PARAGRAPH 32

Plaintiff states that at the time of the closing of the National Bank of Kentucky, as hereinbefore stated, Addi-

Amended and Supplemental Bill of Complaint

son Dimmitt was the owner and holder of 500 shares of stock of BancoKentucky Company; that since that time said Addison Dimmitt died and Helen W. Dimmitt was appointed Executrix of his estate. Proof of claim has been filed with said Executrix. Said estate has been settled and distributed and Helen W. Dimmitt was the heir, devisee and/or distributee. By reason of the foregoing, the defendant, Helen W. Dimmitt, Executrix and distributee, is indebted to the plaintiff in the amount set out in Item 596 of Exhibit 'A' of the original Bill of Complaint." (Amended and Supplemental Bill of Complaint).

"PARAGRAPH 66

Plaintiff states that at the time of the closing of the National Bank of Kentucky, as hereinbefore stated, George M. Clark was the owner and holder of 11,410 shares of stock of the BancoKentucky Company, and that he made an assignment for the benefit of creditors to the Kentucky Title Trust Company as assignee. Proof of claim has been filed with said assignee. Plaintiff states that by reason of the foregoing the defendant, Kentucky Title Trust Company, assignee of George M. Clark, is indebted to the plaintiff in the amount set out in Item 1399 of Exhibit 'A' of the the original Bill of Complaint." (Amended and Supplemental Bill of Complaint.)

"PARAGRAPH 122

Plaintiff states that at the time of the closing of the National Bank of Kentucky, as hereinbefore stated, Herbert Tashgian was the owner and holder of 1,000 shares of stock of BancoKentucky Company; that since that time said Herbert Tashgian died and K. A. Tashgian was appointed Executor of his estate. Proof of claim has been filed with said Executor. Said estate has been settled and distributed

Amended and Supplemental Bill of Complaint

and K. A. Tashgian is the ~~heir, devisee and/or distributee~~. By reason of the foregoing the defendants, K. A. Tashgian, Executor, and K. A. Tashgian, distributee are indebted to the plaintiff in the amount set out in Item 2559 of Exhibit 'A' of the original Bill of Complaint." (Amended and Supplemental Bill of Complaint.)

"PARAGRAPH 130

Plaintiff states that at the time of the closing of the National Bank of Kentucky, as hereinbefore stated, Gustave A. Wesch was the owner and holder of 500 shares of stock of BancoKentucky Company; that since that time said Gustave A. Wesch died and Elizabeth Wesch was appointed Executrix of his estate. Proof of claim has been filed with said Executrix. Said estate has been settled and distributed and Elizabeth Wesch is the heir, devisee and/or distributee. By reason of the foregoing, the defendants, Elizabeth Wesch, Executrix, and Elizabeth Wesch, distributee, are indebted to the plaintiff in the amount set out in Item 2817 of Exhibit 'A' of the original Bill of Complaint." (Amended and Supplemental Bill of Complaint.)

"PARAGRAPH 135

Plaintiff states that at the time of the closing of the National Bank of Kentucky, as hereinbefore stated, John B. Pirtle was the owner and holder of 7,920 shares of stock of BancoKentucky Company; that since that time said John B. Pirtle died and the Louisville Trust Company was appointed Executor of his estate and proof of claim has been filed with said Executor. Plaintiff states that by reason of the foregoing, the defendant, the Louisville Trust Company, Executor of the Estate of John B. Pirtle, deceased, is indebted to the plaintiff in the amount set out in Item 2978 of Exhibit 'A' of the original Bill of Complaint." (Amended and Supplemental Bill of Complaint.)

*Second Amended and Supplemental Bill of Complaint***SECOND AMENDED AND SUPPLEMENTAL
BILL OF COMPLAINT**

(Filed March 30, 1936)

All of said Second Amended and Supplemental Bill of Complaint, except the following typical paragraph, is omitted.

"PARAGRAPH 76

Plaintiff states that at the time of the closing of the National Bank of Kentucky, as hereinbefore stated, Belle W. Zellner was the owner and holder of 1,980 shares of stock of the Banco Kentucky Company. Thereafter said Belle W. Zellner died, and Carl W. Zellner was appointed Executor of her Estate, and claim has been filed with said Executor. Said estate has been closed and settled, and Carl W. Zellner, Henrietta Zellner Nairin, were the heirs, devisees, and/or distributees thereof. By reason of the foregoing, the defendants, Carl W. Zellner, Executor of the Estate of Belle W. Zellner, deceased, and Carl W. Zellner, individually, and Henrietta Zellner Nairin, are indebted to the plaintiff in the amount set out in Item 2968 of Exhibit 'A' attached to the original Bill of Complaint." (Second Amended and Supplemental Bill of Complaint.)

**THIRD AMENDED AND SUPPLEMENTAL
BILL OF COMPLAINT**

(Filed April 11, 1936)

All except following two paragraphs omitted.

"PARAGRAPH I

Now comes A. M. Anderson, Receiver of the National Bank of Kentucky, an insolvent national banking association, organized under the laws of the United States, Louis-

Third Amended and Supplemental Bill of Complaint

ville, Kentucky, and by way of further amendment to his original Bill of Complaint, amends Item 1627 of Exhibit 'A' attached to the original Bill of Complaint, so that it will read '1627, Kentucky Title Trust Company, Trustee under the Will of B. F. Guthrie, 500 Shares, \$1,152.45.'

Plaintiff further amends his Bill of Complaint by stating that at the time of the closing of the National Bank of Kentucky, the Louisville Trust Company, as Trustee under the Will of B. F. Guthrie, was the holder of 500 shares of stock of Banco Kentucky Company. Thereafter the Kentucky Title Trust Company succeeded the Louisville Trust Company as Trustee. By reason thereof, the defendant, Kentucky Title Trust Company, Trustee under the Will of B. F. Guthrie, is indebted to the plaintiff in the sum of \$1,152.45, with interest, as set out in the original Bill of Complaint." (Third Amended and Supplemental Bill of Complaint.)

"PARAGRAPH II

Plaintiff states that at the time of the closing of the National Bank of Kentucky, Mrs. Sallie S. Withers was the owner and holder of 192 shares of stock of the Banco Kentucky Company. Since that time, Mrs. Sallie S. Withers died and Spence S. Carrick was appointed either Administrator or Executor of her estate and proof of claim has been filed with said Administrator or Executor. Plaintiff states that by reason of the foregoing, the defendant, Spence S. Carrick, as personal representative of the estate of Mrs. Sallie S. Withers, is indebted to the plaintiff in the sum of \$442.54 with interest as set forth in the original and amended Bills of Complaint." (Third Amended and Supplemental Bill of Complaint.)

*Fourth Amended and Supplemental Bill of Complaint***FOURTH AMENDED AND SUPPLEMENTAL
BILL OF COMPLAINT**

(Filed June 9, 1936)

All except following paragraph, amending Paragraph V of the original Bill of Complaint, is omitted.

SUB-PARAGRAPH 5—PARAGRAPH I

"5. Plaintiff states that at the time of the closing of the National Bank of Kentucky, Charles Kobert was the owner and holder of 2084 shares of stock of Banco Kentucky Company, that since that time said Charles Kobert died and that on August 5, 1935 the will of said Charles Kobert was admitted to probate in the County Court of Marion County, Kentucky, and that on said date the defendants, Charles B. Kobert, Lula K. Steeman and C. J. Edmonds qualified in said court as the executors of the will of said Charles Kobert, deceased, and that said Charles B. Kobert, Lula K. Steeman and C. J. Edmonds are now and ever since said date have been acting as such executors.

Plaintiff states that said defendants are residents of the State of Kentucky and the Western District of Kentucky, and that proofs of claim properly verified for the amounts due him, as hereinafter set out, have been filed with said executors and payment of same has been demanded of them; and plaintiff states that the claims herein sued on are a just demand against said estate and have never been paid, and that there is no offset or discount against same or any usury therein." (Fourth Amended and Supplemental Bill of Complaint.)

*Amendment to Bill of Complaint***FIFTH AMENDED AND SUPPLEMENTAL
BILL OF COMPLAINT**

(Filed January 5, 1937)

Alleges that Fannie Owen Woolfolk, listed as a defendant in the original Bill of Complaint, died testate February 18, 1936, prior to service, that Matalea Mourning Bickel was appointed executrix of her estate on March 26, 1936, and that claim is made against the executrix.

AMENDMENT TO BILL OF COMPLAINT

(Made part of record August 2, 1939)

All, except following paragraph, omitted.

"Now comes the plaintiff, A. M. Anderson, Receiver of the National Bank of Kentucky, an insolvent national banking association, organized under the laws of the United States, Louisville, Kentucky and amends his Bill of Complaint and the previous amendments thereto, and for such amendment realleges all of the allegations contained in his Bill filed herein and amendments thereto and in addition thereto states, with respect to the defendants named in the Bill of Complaint and the amendments thereto as distributees and heirs of various persons who owned stock in the Banco Kentucky Company, that such defendants received, as legatees, devisees and distributees, from the estate of persons owning Banco Kentucky stock, as listed in the Bill of Complaint and amendments thereto, cash and personal and/or real property in the amounts set out in the Exhibit hereto attached and made a part hereof.

Plaintiff states that said defendants named as legatees, devisees and distributees are liable for the payment of the claim against the person from whom they received such assets as hereinbefore set out.

Amendment to Bill of Complaint

WHEREFORE: Plaintiff, A. M. Anderson, Receiver of the National Bank of Kentucky, an insolvent national banking association, organized under the laws of the United States, Louisville, Kentucky, prays as in his original Bill of Complaint and the amendments thereto."

The exhibit attached to this amendment, listing the ancestor who held the stock, the distributee, the amount claimed from the distributees and the amount received by each distributee as shown by the records of the county court, is omitted with the exception of the information with respect to the estate of Addison Dimmitt, deceased. Information with respect to other estates is of substantially the same nature. The exhibit with respect to Addison Dimmitt, deceased, is as follows:

(Excerpt from Exhibit attached to Amendment to Bill of Complaint, made part of the record on August 2, 1939:)

ANCESTOR WHO HELD STOCK	DISTRIBUTE	AMOUNT CLAIMED FROM DISTRIBUTE	AMOUNT RECEIVED BY DISTRIBUTE
Dimmitt, Addison	Helen W. Dimmitt	\$1,152.54	\$111,763.56

There was attached certified copy of final settlement of Helen W. Dinamitt as executrix of Addison Dimmitt, deceased, which is set out as follows:

No. 20306

JEFFERSON COUNTY COURT

In re: **FINAL SETTLEMENT** of Helen W. Dimmitt,
Executrix under the will of Addison Dimmitt, deceased

RECEIPTS

Cash—Liberty Bank & Trust Company	\$ 2,908.24
200 shares stock Devilus Pfd.	1,700.00
20 shares stock Devilus Com.	80.00
180 shares stock Vick Finance Co.	900.00
25 shares stock Morris Plan Industrial Bank	2,500.00
35 shares stock Drug Inc.	2,047.50

Amendment to Bill of Complaint

200 shares stock Standard Oil of Kentucky	3,325.00
300 shares stock Standard Oil of Indiana	6,487.50
25 shares stock Frankfort Dist. pfd. }	2,500.00
25 shares stock Frankfort Dist. com. }	
77½ shares stock Goodwin Laboratories	775.00
Note—J. J. Goodwin	24,400.00
Interest on J. J. Goodwin note to November 13th	174.88
Note—Thos. A. and Wm. R. Tate—no value (\$250.00)	0
Note—Thos. A. and Wm. R. Tate \$50.00—no value	0
Mortgage—J. J. Goodwin—balance with interest to date	11,270.00
87½ shares stock Valley Improvement Company—no value	0
50 shares stock Consumers Tobacco Company—no value	0
5 shares stock American Insurance Corporation—no value	0
3 shares stock Newman Drug Company	600.00
½ interest in partnership with Elizabeth Wesch in Newman Drug Company	60,000.00
Total	\$119,668.12

DISBURSEMENTS

Note—Liberty Bank & Trust Company	\$ 7,000.00
Interest to November 13th	51.33
L. D. Pearson & Son, Undertaker	660.00
Dr. Virgil Simpson—services	25.00
Peter & Burghard—Monument	125.00
Virginia Hicks, nurse	13.10
Lillian Williams, nurse	27.50
Cost inheritance tax proceedings	150.00
Newman Drug Company	21.68
R. L. Haag, Evergreen	67.95
Marret & Miller—flowers	55.00
Besten & Langen	57.75
Standard Auto Company	51.15
Women's Auxiliary to Kentucky Medical Journal—donation	58.80

Motion to Dismiss

Eunk & Wagnall Co.	18.00
Harcourt & Company	42.50
Stewart Dry Goods Co.	189.28
Swanee Military Institute	17.10
Byek & Co.	31.65
Williamson Tree Co.	225.00
Collector of Internal Revenue—income tax	481.77
Ed Bloomfield, Attorney—services	2,500.00
Commissioner and Clerk's fees	35.00
Total	\$ 11,904.56
Residue	\$111,763.56

MOTION TO DISMISS

(Filed April 15, 1936)

Come the defendants whose names are signed hereto by their respective counsel and severally move the court to dismiss the bill of complaint herein as amended upon the following grounds:

- (1) Because it appears from the bill of complaint as amended herein that there is an insufficiency of facts to constitute a valid cause of action in equity against these defendants, or any of them;
- (2) Because it appears from the bill of complaint herein as amended that there is a misjoinder of parties defendant;
- (3) Because it appears from the bill of complaint herein as amended that this suit should have been brought as an action on the law side of the court; that the plaintiff has an adequate remedy at law and that there is a want of jurisdiction in equity;
- (4) Because it affirmatively appears from the averments of the bill of complaint herein as amended that plaintiff in this action did heretofore, with full knowledge of the facts relied on herein, institute an action in this court against the Receiver of the Banco Kentucky Company, a corpora-

Motion to Dismiss

tion, and that in said action plaintiff recovered a judgment against said Receiver and that on this judgment the plaintiff in this action has collected the sum of \$90,745.17 from said Receiver, and it further appears that said judgment was secured by plaintiff's alleging and establishing by proof in said action that BancoKentucky Company was the real, true and beneficial owner of 540,484 Trustees Participation Certificates representing the ownership of 37,721,624 shares of stock of the National Bank of Kentucky, and that said Participation Certificates and shares of stock in the National Bank of Kentucky were and are the same; identical Trustees Participation Certificates and shares of stock of the National Bank of Kentucky as are mentioned and referred to in plaintiff's bill in this action, and that plaintiff's action and conduct in asserting that BancoKentucky Company was the real, true and beneficial owner and holder of said Participation Certificates and said shares of stock in the National Bank of Kentucky, and his prosecution of said claim against the Receiver of the BancoKentucky Company to a judgment, and the collection, in part, of said judgment from said Receiver, constituted an election on the part of the plaintiff herein, and said election now constitutes a bar to plaintiff's asserting in this action that the defendants herein, or any of them, are the real owners or holders of said Participation Certificates or the real owners or holders of any part of said stock in the National Bank of Kentucky, and a bar to plaintiff's asserting or claiming any right to recover any sum from defendants; upon the grounds asserted in plaintiff's bill of complaint herein as amended;

(5) Because it appears from the bill of complaint herein as amended that plaintiff, in the prior suit which he instituted in this court against the Receiver of the Banco-Kentucky Company, procured the entry of a judgment in

Motion to Dismiss

said action in this court, in which said judgment it was by this court adjudged that the BancoKentucky Company was the real, true and beneficial owner of the Trustees Participation Certificates of the shares of stock of the National Bank of Kentucky mentioned and described in the complaint herein as amended; and it further appears from said bill of complaint as amended that said judgment so holding said BancoKentucky Company to be and to have been the real, true and beneficial holder of said Certificates and said Bank stock, was affirmed by the Circuit Court of Appeals for the Sixth Circuit, and that said judgment has become final and binding and is now in full force and effect, and that plaintiff has collected on said judgment the sum of \$90,745.17, and plaintiff herein is by said judgment entered in this court and affirmed by said Circuit Court of Appeals, and by his collection, in part, of said judgment estopped from asserting or maintaining in this action that these defendants, or any of them, were or are the real, true or beneficial owners of the shares of stock or Trustees Participation Certificates mentioned and referred to in the bill of complaint herein as amended.

WHEREFORE, the defendants pray that the bill of complaint herein as amended may be dismissed, and that each of these defendants be dismissed hence with his or her costs, and for such other relief as to the court may seem just.

This motion was filed on behalf of approximately 500 defendants. Similar motions were filed by other defendants who adopted it by reference or set out motions similar in substance. By an order of the court, agreed to by plaintiff, all general defenses set up by any one defendant were available to all others.

Answer of Katherine Kirkpatrick Abbott

Answer of Katherine Kirkpatrick Abbott

(Filed August 30, 1938)

Answer was filed on behalf of David J. Abbott on September 28, 1936. This was adopted as a typical answer by other defendants and was incorporated by reference in their answers. This answer was amended on October 27, 1936. Plaintiff's reply to said answer was filed on February 16, 1937. Abbott died and his widow, who was appointed administratrix of his estate, was made a party by order of revivor entered on June 24, 1938. Thereafter this Substituted Answer was filed on her behalf on August 30, 1938.

SUBSTITUTED ANSWER OF DEFENDANT, KATHERINE KIRKPATRICK ABBOTT, ADMINISTRATRIX OF DAVID J. ABBOTT, DECEASED

The defendant, Katherine Kirkpatrick Abbott, Administratrix of David J. Abbott, deceased, for answer to the Bill of Complaint herein, (in referring to the Bill of Complaint the references are to the paragraphs marked in Roman numerals by the plaintiff) admits the allegations of Paragraph 1, page 3, Paragraph II., page 3, and so much of Paragraph III., page 3, as is contained on page 3 of the printed Bill.

Defendant denies the following portions of Paragraph IV., page 4, that the plaintiff has not an adequate remedy at law, or that an accounting is necessary to determine the proportionate part of the aggregate liability claimed against this defendant, or any of the defendants, or to determine the credit to which defendant may be entitled.

Defendant denies that the matters set forth herein involve complicated interests or degrees of interest among approximately six thousand stockholders, or any stock-

Answer of Katherine Kirkpatrick Abbott

holder, of Banco Kentucky Company, other than between the plaintiff and himself.

Defendant denies that equitable determination in one action of the questions of common interest will avoid a multiplicity of suits and circuity of actions, or the unreasonable expense of thousands of separate suits, or that the trust fund will be dissipated, or that the plaintiff has any ground in equity, or that plaintiff will suffer irreparable or any damage or injury by reason of separate suits, as required by law; denies that the plaintiff has no adequate remedy at law, or that this court, sitting in equity, has any jurisdiction of this suit.

As to Paragraph V., page 4, this defendant has no knowledge or information sufficient to form a belief as to whether the other defendants are residents of the State of Kentucky, or the Western District of Kentucky, nor whether the corporate defendants were organized or existing under the laws of the State of Kentucky, or were doing business within said state.

Defendant admits the allegations of Paragraph VI., page 4, of the Bill.

Defendant admits the allegations of Paragraph VII., page 5, of the Bill.

Defendant admits the allegations of Paragraph VIII., page 5, of the Bill.

Defendant admits the allegations of Paragraph IX., page 5, of the Bill.

Defendant admits the allegations of Paragraph X., page 6, of the Bill.

Defendant admits the allegations of Paragraph XI., page 6, of the Bill, except in the following particulars: defendant denies that the plan proposed on July 19th, 1929, to the then holders of Trustees Participation Certificates, or to prospective purchasers of Banco stock was that a

Answer of Katherine Kirkpatrick Abbott

corporation would be organized. Defendant says that the Banco Kentucky Company was organized prior to July 19, 1929. Defendant denies that it was proposed that such Banco Kentucky Company should be a holding company. Defendant says that said corporation was to be an active corporation, doing business as provided in its Charter, as will be fully shown hereafter.

In regard to Paragraph XII., pages 6 and 7 of the Bill, defendant denies that the holders of 95 per cent of the stock of the National Bank of Kentucky and the Louisville Trust Company caused said Banco Kentucky Company to be organized; admits that it was organized at the instance of persons who were officers and members of the National Bank of Kentucky and the Louisville Trust Company; denies that said Banco Kentucky Company was organized as a holding company, or as the agency or the instrumentality for the use of enrichment or furtherance of a scheme to engage in unlawful acts to enable the trustees to unlawfully acquire any property whatsoever, or in defiance of the meaning, or spirit or intent of the laws of the United States or the Commonwealth of Kentucky, or any other state, relating to the ownership or operation or supervision of banks or trust companies. The defendant denies that the Banco Kentucky Company was organized by any one as an agency or instrumentality, or for any other purpose, than as a bona fide corporation to conduct the business provided for in its Charter. The defendant admits that the capital stock of Banco Kentucky Company was as set out in Paragraph XII., and that the Articles of Incorporation of said company contained the provisions quoted in Paragraph XII.

For answer to Paragraph XIII., pages 7 and 8 of the Bill, defendant denies that the incorporators or stockholders of Banco Kentucky Company had formulated any

Answer of Katherine Kirkpatrick Abbott

unlawful plan, or proceeded to unlawfully acquire, or own, or hold, or operate a group of state or national banks and trust companies contrary to or in defiance of the meaning, or spirit, or intent of the laws of the United States, or of the Commonwealth of Kentucky, or of other states, relating to the ownership or operation or supervision of banks or trust companies, or unlawfully to use the assets of said banks or trust companies in speculative financial transactions prohibited by law, or to unlawfully use the assets or property of one or more of said banks in making loans on the security of the holding company stock in violation of law.

In answer to Paragraph XIV., page 8 of the Bill, defendant denies that after the exchange of trustees participation certificates for stock of the Banco Kentucky Company, the holders of the stock of the Banco Kentucky Company continued to be the actual or real or beneficial holders of approximately 95 per cent of stock of the National Bank of Kentucky, or any of said stock, or that the stockholders of Banco Kentucky Company had any interest in the stock of the National Bank of Kentucky per se, or any other interest in Banco Kentucky Company other than that of stockholder.

Defendant denies that, after the organization of Banco Kentucky Company and after the acquisition by the stockholders of Banco Kentucky Company of their stock in that corporation, such stockholders continued to receive all or any of the benefits or advantages incident to the ownership of stock in the National Bank of Kentucky.

In answer to Paragraph XV., page 8 of the Bill, defendant denies that at the time of the organization of the Banco Kentucky Company, or at any or all times thereafter, the persons who appeared as stockholders of said Banco Kentucky Company exercised all or any of the

Answer of Katherine Kirkpatrick Abbott

privileges of shareholders of the National Bank of Kentucky, or of other banks or trust companies, whose capital stock was held by Banco-Kentucky; denies that the persons who appeared as shareholders of the Banco-Kentucky Company secured or retained to their own use or enrichment all the benefits or advantages of shareholders of the National Bank of Kentucky, or were from the time of the organization of the Banco-Kentucky Company up to the time of the closing of the National Bank of Kentucky, or at any time, the real or actual or beneficial owners of the Trustees Participation Certificates, which represented shares of the stock of the National Bank of Kentucky. Defendant denies that from the time of the organization of Banco-Kentucky Company to the date of the closing of the National Bank of Kentucky, or at all, the Banco-Kentucky Company acted as a corporate agency or instrumentality for the persons, or any of them, whose names appeared as stockholders of said company, or as such corporate agency or instrumentality for said owners of said Banco-Kentucky Company it held Trustees Participation Certificates, or that the persons whose names appeared as stockholders of the Banco-Kentucky Company were the actual, or real, or beneficial owners of the stock of the National Bank of Kentucky.

Defendant denies the following allegations of Paragraph XVI., page 8 of the Bill, that the holders of Trustees Participation Certificates, or any of them, organized the Banco-Kentucky Company as a holding corporation for their bank stock, or at all; denies that the organizers of said Banco-Kentucky Company intentionally, or at all, undertook to evade the provisions of Sections 5151 and 5234 of the Revised Statutes by omitting from the Articles of Incorporation any provision for the payment of liability of national or state banks, provided by the Laws of the

Answer of Katherine Kirkpatrick Abbott

United States, as against the stockholders of Banco, or in providing that the private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever, or inserting in the Banco-Kentucky certificates of stock the words, "fully paid and nonassessable"; denies that they attempted to evade any assessment liability, or denies that they perpetrated a fraud upon the depositors or creditors of the National Bank of Kentucky.

In answer to Paragraph XVII., page 9 of the Bill, defendant denies that by reason of anything theretofore alleged in the Bill, the defendants, or any of them, or this defendant, are not entitled in equity or good conscience to the immunity recognized by law which stockholders of a bona fide lawfully formed or conducted corporation ordinarily have, or that defendants, or any of them, or this defendant, are not entitled in equity or good conscience to shield themselves from the assessment imposed upon them by law with said corporate form of the Banco-Kentucky Company.

Defendant denies that there was any assessment imposed upon them, or any of them, by law.

This defendant denies that the defendants, or any of them, or this particular defendant, was, or is, the real, or true, or beneficial stockholder or shareholder of the National Bank of Kentucky, or had promised to pay said assessment, or was estopped to deny said assessment liability, or are the owners of the shares of stock of the National Bank of Kentucky, or that this defendant, or any defendant appearing to be stockholders of the Banco-Kentucky Company is liable for the payment of the assessment levied by the Comptroller of the Currency therein before referred to in the Bill of Complaint, individually, or ratably, or proportionately to the extent that the number of shares held by him bears to the total number of

Answer of Katherine Kirkpatrick Abbott

shares issued and outstanding of Banco-Kentucky stock, or at all.

Defendant admits the allegations of Paragraph XVIII., page 9, of the Bill.

Defendant admits the allegations of Paragraph XIX., pages 9 and 10, of the Bill.

Defendant has no knowledge or information as to the allegations of Paragraph XX., page 10, of the Bill.

Defendant admits the allegations of Paragraph XXI., page 10, of the Bill.

Defendant has no knowledge or information sufficient to form a belief as to the allegations of Paragraph XXII., page 10, of the Bill.

Defendant admits the allegations of Paragraph XXIII., page 10, of the Bill.

In answer to Paragraph XXIV., page 10, of the Bill, defendant denies that this defendant, or each of the defendants, or each stockholder of Banco-Kentucky Company not named a defendant herein, is individually liable to pay said assessment referred to in the Bill of Complaint in the proportion that his shares of Banco-Kentucky stock bears to the total number of shares issued and outstanding at the date of the closing of the National Bank of Kentucky, or at all.

Defendant denies that there is due from him, or from each stockholder of Banco-Kentucky Company the sum of \$2,304,909, or any sum, per share of stock of Banco-Kentucky Company held or registered in his name or owned by him at the time of the closing of the National Bank of Kentucky.

In answer to Paragraph XXV., page 11 of the Bill, defendant admits that at the time of the closing of National Bank of Kentucky he owned the number of shares of Banco-Kentucky stock listed in the Exhibit, but denies that he is

Answer of Katherine Kirkpatrick Abbott

indebted to the Receiver of the National Bank of Kentucky in the amount set opposite his name, or in any amount whatsoever, either with or without interest.

PARAGRAPH II.

The defendant, Katherine Kirkpatrick Abbott, Administratrix of David J. Abbott, deceased, says that the Banco-Kentucky Company was incorporated under the laws of Delaware on July 16th, 1929.

Defendant says that said Banco-Kentucky Company was not incorporated as a holding company, but was incorporated to do the business set out in its Articles of Incorporation.

Paragraph 3 of the Articles of Incorporation of said company provided that said company had the following powers:

“Third: The nature of the business or objects or purposes proposed to be transacted, promoted or carried on are:

The acquiring by purchase or otherwise of all or any portion of the capital stock, property, assets and franchises of any or all corporations transacting business in any State of the United States; the purchasing, mortgaging, pledging or otherwise disposing of shares of the capital stock of or any bonds, securities or evidence of indebtedness created by or issued by any other corporation or corporations organized under the laws of any State of the United States or of any foreign country and while the owner thereof to exercise all the rights, powers and privileges of ownership; the purchasing or otherwise acquiring of any promissory notes or other evidence of indebtedness executed by any person, firm, association or corporation; the financing, managing or operating of any commercial or manufacturing business or enterprise; the underwriting of any issue of stocks, bonds, deben-

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tures or other securities issued by any corporation; the charging of fees or commissions for any or all services rendered or advice or assistance given to any person, firm, association, or corporation, acquiring and paying for in cash, stocks or bonds of this corporation or otherwise, the good will, rights, assets and property of any person, firm, association or corporation and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm or corporation.

The corporation shall have power to act as registrar or transfer agent for any other association or corporation and to act as agent in general for any other person, firm, association or corporation.

The corporation shall have full power to issue bonds, debentures or obligations of this corporation from time to time, for any of the objects or purposes of the corporation and to secure the same by mortgage, pledge deed of trust or otherwise. The corporation shall have full power to purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital; and provided, further, that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

The corporation shall have full power to guarantee the obligations of any other person, firm, association or corporation and to become surety therefor and to become joint maker, endorser or acceptor of any such obligations and to charge fees and commissions for such services.

The corporation shall have full power without restriction or limit as to amount to purchase or otherwise acquire, hold, own, mortgage, sell, convey or otherwise dispose of real and personal property of every class and description in any of the States of the United States, or any foreign country, subject to the laws of such States or foreign countries.

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In general, the corporation shall have full power to carry on any other business in connection with the foregoing whether commercial, manufacturing, financial or otherwise, and to have and exercise all the powers conferred by the laws of Delaware upon corporations formed under the act hereinafter referred to and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

The foregoing clauses shall be construed both as objects and powers and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation."

Said corporation had an authorized capital stock of \$20,000,000, divided into shares of \$10.00 each.

Paragraph 8 of the Articles of Incorporation provided:

"Eighth: The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever."

Defendant says that said paragraph of the Articles of Incorporation of said company was not peculiar to the Banco-Kentucky Company, but was the usual and customary provision placed in Articles of Incorporation of Delaware corporations, and was not placed therein by the organizers of the Banco-Kentucky Company for any unlawful purpose.

Defendant says that her intestate at no time owned any stock of the National Bank of Kentucky, or any Trustees' Certificates, representing any portion of any stock of the National Bank of Kentucky.

Defendant says that her intestate became a stockholder of the Banco-Kentucky Company by subscribing for and paying for the shares obtained by him at the rate of \$25.00

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per share. Said payment was called for as of October 1st, 1929.

Defendant further says that it was the plan and intention of the incorporators of said Banco-Kentucky Company to not only acquire Trustees' Certificates of stock, evidencing ownership in the National Bank of Kentucky and the Louisville Trust Company, but to also purchase other property with its stock or with cash, and in addition to sell a large portion of its capital stock for cash. In pursuance of this plan said Banco-Kentucky Company had prior to October 1st, 1929, secured bona fide subscriptions for approximately 400,000 shares of Banco-Kentucky stock at \$25.00 per share, and thereafter collected upon said subscriptions exceeding \$9,869,650.

Defendant further says that from October 1st, 1929, said Banco-Kentucky Company, through its officers and Board of Directors, functioned as a separate, distinct and independent corporation and continued to do so until after the closing of the National Bank of Kentucky, when said Banco-Kentucky Company was placed in receivership by the Jefferson Circuit Court, of Jefferson County, Kentucky, a Court of original and general jurisdiction in the State of Kentucky.

Joseph S. Laurent was appointed receiver of said Banco-Kentucky Company and continued to act as such during the occurrence of the suit mentioned below.

Defendant says that the National Bank of Kentucky was closed by resolution of its directors on November 16, 1930; that thereafter on November 17, 1930, the Comptroller of the Currency appointed Paul C. Keyes, as receiver of said Bank. Said Keyes immediately took charge of the affairs of the National Bank of Kentucky and employed, among others, as an assistant, W. T. Zur Schmiede, who was prior to the failure of the National Bank of Kentucky Cashier of

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said Bank and was also Secretary of the Banco-Kentucky Company.

Said Keyes, almost immediately following his appointment as receiver, had the books and records of said Banco-Kentucky Company fully examined and at all times had access to all the records and papers of said company. Prior to the time of the filing of his suit against the Banco-Kentucky Company, to recover upon the assessment theretofore made by the Comptroller, which is the identical assessment involved in this suit, said A. M. Anderson, who succeeded Keyes as receiver, had become thoroughly familiar with the plan and method and organization of the Banco-Kentucky Company, had a list of the stockholders of same, knew of whatever connection there was between Banco-Kentucky Company and the National Bank of Kentucky, and was fully cognizant of all operations of the Banco-Kentucky Company from its formation to the appointment of its said receiver.

Defendant says that the Comptroller of the Currency on the 20th day of February, 1931, by virtue of the authority vested in him by law, did levy and make an assessment of one hundred per cent, amounting to \$4,000,000 upon the shareholders of the National Bank of Kentucky.

Defendant says that there were registered holders on the records of the National Bank of Kentucky three classes of stockholders:

1. directors having qualifying shares;
2. individuals, not directors, owning bank stock outright; and
3. six trustees, holding in a trust capacity Trustees' Participation Certificates, representing ownership of stock in the National Bank of Kentucky and the Louisville Trust Company.

Defendant says that neither Banco-Kentucky Company, nor any of the stockholders of Banco-Kentucky Company

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were listed on the books of the National Bank of Kentucky as stockholders of said National Bank of Kentucky, except the directors of said National Bank of Kentucky, who held qualifying shares in the National Bank of Kentucky.

Defendant says that following said assessment the plaintiff attempted to collect said assessment from all the stockholders listed in the records of the National Bank of Kentucky, including the directors and the other individuals registered as holding stock.

Defendant says that plaintiff did not attempt to collect said assessment from the six trustees holding stock under a Trust Agreement, for the reason that said plaintiff was thoroughly familiar with the Trust Agreement under which said stock was held by said Trustees and which agreement charged the true owners thereof with liability.

Defendant says that, as neither the Banco-Kentucky Company, nor its stockholders (other than such as may have held National Bank stock as qualifying shares for directorship), were listed as holders of said National Bank of Kentucky stock on the latter's records, for plaintiff to hold either Banco-Kentucky Company, or any of its stockholders, for said assessment, it was necessary for said plaintiff to prove that either Banco, or its stockholders, were the true and beneficial owners of said National Bank of Kentucky stock.

With full knowledge of all the foregoing facts hereinabove set out, the plaintiff elected to, and did, proceed to attempt to hold the Banco-Kentucky Company as the true owner of all the National Bank of Kentucky stock involved in this action, and in pursuance of said election brought an action in this Court, numbered 1383, styled Paul C. Keyes (later succeeded by A. M. Anderson), Receiver of the National Bank of Kentucky, against Joseph S. Laurent, Receiver of Banco-Kentucky Company, for \$3,772,162.40 on

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account of said assessment against said Banco-Kentucky by reason of its ownership of Trustees' Participation Certificates issued by the six Trustees hereinabove referred to, which Trustees' Certificates in turn represented an indivisible interest in the trust estate held by said Trustees.

This defendant says that prior to the institution of said suit against Joseph S. Laurent, as Receiver of the Banco-Kentucky Company, it was necessary for said Receiver to show to the Jefferson Circuit Court some cause for obtaining permission to sue said Laurent, as Receiver, and pursuant to this Paul C. Keyes, as Receiver of the National Bank of Kentucky and with full knowledge of all the foregoing facts concerning the relation of Banco-Kentucky Company to its stockholders and Banco-Kentucky Company to the National Bank of Kentucky, filed a Petition in the Jefferson Circuit Court on October 24, 1931, in which he set out in his request for permission to sue, the following paragraph:

"Your petitioner further represents that at the time of the closing of said National Bank and the appointment of your Petitioner as Receiver, the defendant, The Banco-Kentucky Company, was the owner and holder of 540,484 Trustees' Participation Certificates, representing the ownership by said The Banco-Kentucky Company of 37,721,624 shares of the capital stock of the National Bank of Kentucky and by reason of the aforesaid mentioned assessment there is due your Petitioner as Receiver of the National Bank of Kentucky the sum of Three Million, Seven Hundred and seventy-two thousand, one hundred sixty-two and 40/100 (\$3,772,162.40) Dollars from The Banco-Kentucky Company."

A certified copy of said Petition is filed herewith and made a part hereof, marked Exhibit "A."

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Defendant says that on the same day that said Petition was filed the plaintiff in said Petition presented to the Court for signature an order construing his own Petition, which was signed by the Chancellor of the Jefferson Circuit Court and duly entered of record on the same day.

Defendant says that said Order granted said Keyes the permission to bring said suit upon the ground that Banco-Kentucky Company was the owner of stock in the National Bank of Kentucky. Said Order contained the following statement:

... "And it appearing that said action is an action arising under the laws of the United States and that it is proper and appropriate that leave should be granted to said Paul C. Keyes, as Receiver of the National Bank of Kentucky, to institute an appropriate action at law or equity in the Courts of the United States UPON HIS CLAIM OF \$3,772,162.40, or such other amount as he may claim to be due from The Banco-Kentucky Company AS HIS ASSESSMENT upon the capital stock of the National Bank of Kentucky, owned by said company at the time its assets were placed in the hands of the Comptroller of the Currency of the United States."

A certified copy of said Order is filed herewith and made part hereof, marked Exhibit "B."

Pursuant to said Order the Receiver of the National Bank of Kentucky brought the aforesaid suit numbered 1383 and in his complaint in said cause made, among others, the following allegations:

"Plaintiff says that said money is due him as an assessment upon the shares of stock of The National Bank of Kentucky owned by The Banco Kentucky Company at the time plaintiff was appointed Receiver or upon certain Trustees' Participation Certificates representing The National Bank of Kentucky stock

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owned by The Banco-Kentucky Company at the time of said appointment of plaintiff as Receiver."

Again,

"The Banco-Kentucky Company was at the time of the closing of The National Bank of Kentucky and the appointment of the plaintiff as Receiver, the holder of record of five hundred forty thousand four hundred eighty-four (540,484) Trustees' Participation Certificates, having a par value of \$10.00, which Trustees' Participation Certificates were issued under the terms of a certain Trust Agreement of April 22nd, 1927, and which Trustees' Participation Certificates represent the ownership of 37,721,624 shares of stock of The National Bank of Kentucky of Louisville, as herein-after more fully set forth."

Again,

"Acting pursuant to the authority and direction of the Comptroller of the Currency aforesaid, the plaintiff, as Receiver of The National Bank of Kentucky served notice upon the defendant, by registered letter, that the Comptroller of the Currency did levy an assessment as aforesaid upon the stockholders of The National Bank of Kentucky of Louisville, Kentucky, payable at the office of the plaintiff as Receiver on or before April 1, 1931, and advising the defendant that the Banco-Kentucky Company was the holder of Five hundred forty thousand and four hundred eighty-four (540,484) Trustees' Participation Certificates, issued under the terms of said Trust Agreement of April 22, 1927, which said Trustees' Participation Certificates represent the ownership of 37,721,624 shares of stock in The National Bank of Kentucky, and making demand upon the defendant to pay the assessment on 37,721,624 shares of The National Bank of Kentucky, represented by the aforesaid trustees' Participation Certificates, in accordance with said order and assess-

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ment of the Comptroller of the Currency and said notice. Notwithstanding said assessment notice and demand upon the defendant, no part of said assessment has been paid and said defendant has refused to pay said assessment or any part thereof and there is now due and owing to the plaintiff as Receiver of The National Bank of Kentucky the sum of Three Million Seven Hundred seventy-two Thousand, One hundred sixty-two and 40/100 (\$3,772,162.40) Dollars as the assessment and requisition duly made upon the defendant as a shareholder of The National Bank of Kentucky by the Comptroller of the Currency as aforesaid."

Again,

"Said Trust Agreement, dated April 22, 1927, hereinabove referred to, was an agreement between SUCH OWNERS AND HOLDERS of the capital stock in The National Bank of Kentucky of Louisville, Kentucky, as united therein, by signing it or a counterpart thereof, or by depositing THEIR STOCK, as therein provided, referred to therein as 'Bank stockholders' and such OWNERS AND HOLDERS of the capital stock of the Louisville Trust Company of Louisville, Kentucky, as united by signing it or a counterpart thereof, or by depositing their stock as therein provided, therein referred to as 'Trust Company stockholders,' and Henry Vogt," etc.

Again,

"The Banco-Kentucky Company and/or Joseph S. Laurent ever since September 19, 1929, has been and is the OWNER and HOLDER of said Trustees' Participation Certificates for Five Hundred forty Thousand Four Hundred eighty-four (540,484) shares, of the par value of \$10, per share each of said trust estate, and by uniting said Trust Agreement and by accepting said certificates, The Banco-Kentucky Company accepted, consented to and adopted said Trust

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Agreement and all of the terms thereof, including the agreement to pay the same liability upon each Trustees' Participation Certificate as The Banco-Kentucky Company would have been subject to IN THE CASE THE BANCO-KENTUCKY COMPANY HAD BEEN THE OWNER OF RECORD of such proportionate part of the shares held by the 'Trustees' in The National Bank of Kentucky as the number of shares called for by The Banco-Kentucky Company's Trustees' Participation Certificate bore to the whole number of shares covered by all outstanding Trustees' Participation Certificates, as provided in Article IX, of said Trust Agreement, hereinabove fully set forth."

Defendant says that said action was defended, but plaintiff prosecuted said action to a judgment and secured a judgment of \$3,772,162.40, with interest, against the Banco-Kentucky Company, as the true and beneficial owner of the shares of stock of the National Bank of Kentucky, registered on the books of the National Bank of Kentucky in the name of the six Trustees above referred to.

Defendant says that plaintiff also in said action secured a finding of fact as follows:

"(8) On September 19, 1929, the Banco-Kentucky Company became the owner of trustees' participation certificates issued by the trustee under the agreement of April 22, 1927, certifying that the defendant was the owner of 540,484 shares of the par value of \$10.00 each of said trust estate, consisting of shares of capital stock of the National Bank of Kentucky, and the Louisville Trust Company of Louisville, Kentucky."

"(10) At the time of the appointment of Paul C. Keyes, as Receiver of the National Bank of Kentucky, the Banco-Kentucky Company was the owner and holder of 540,484 shares of the trust estate, each share having a par value of \$10.00. The 540,484 shares of trustees' participation certificates owned by the defendant represented 37,721,624 shares of the capital

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stock of the National Bank of Kentucky, having a par value of \$100.00."

"(12) The Banco-Kentucky Company received dividends in proportion to its interest in the National Bank of Kentucky."

Defendant says that plaintiff also secured in said action a finding of law as follows:

"(1) That the Banco-Kentucky Company and the defendant, Joseph S. Laurent, its receiver, was the actual and real owner of 37,721,624 shares of stock of the National Bank of Kentucky, having a par value of \$100.00 per share on November 17, 1930."

Defendant says that thereafter the Banco-Kentucky Company appealed said case to the Circuit Court of Appeals, for the Sixth Circuit, and in the brief upon said appeal the plaintiff herein insisted that the Banco-Kentucky Company was the true and beneficial shareholder of all the stock of the National Bank of Kentucky involved in this action.

Thereafter the Circuit Court of Appeals, for the Sixth Circuit, affirmed said decision below (70 Fed. [2d] 819), on the ground that the Banco-Kentucky Company was the true and beneficial owner of the shares of the National Bank of Kentucky involved in this action and therefore liable for the assessment upon same, even though said Banco-Kentucky was not listed as a stockholder on the records of the National Bank of Kentucky.

Defendant pleads and relies upon the actions of the plaintiff above referred to as an election of remedies and parties in bar of any suit against this defendant on the stock assessment of the Comptroller in regard to shares of the National Bank of Kentucky.

PARAGRAPH III.

Defendant, for further answer herein, says that the Banco-Kentucky Company was a corporation organized under the laws of the State of Delaware on July 16th, 1929,

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and thereafter continued to function as an independent corporation.

Defendant says that the Articles of Incorporation of said Banco-Kentucky Company contain the following provision:

“Third: The nature of the business, or objects or purposes proposed to be transacted, promoted or carried on are:

“The acquiring by purchase or otherwise of all or any portion of the capital stock, property, assets and franchises of any or all corporations transacting business in any State of the United States; the purchasing, holding, selling, assigning, transferring, mortgaging, pledging or otherwise disposing of shares of the capital stock of or any bonds, securities or evidence of indebtedness created by or issued by any other corporation or corporations organized under the laws of any State of the United States or of any foreign country and while the owner thereof to exercise all the rights, powers and privileges of ownership; the purchasing or otherwise acquiring of any promissory notes or other evidences of indebtedness executed by any person, firm, association or corporation; the financing, managing or operating of any commercial or manufacturing business or enterprise; the underwriting of any issue of stocks, bonds, debentures or other securities issued by any corporation; the charging of fees or commissions for any or all services rendered or advice or assistance given to any person, firm, association or corporation; acquiring and paying for in cash, stock or bonds of this corporation or otherwise, the good will, rights, assets and property of any person, firm, association or corporation and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm or corporation.”

Defendant says that the Banco-Kentucky Company, pursuant to the authority contained in its Articles of Incorporation above quoted, acquired by purchase or exchange all

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of the Trustees' Participation Certificates, representing stock in the National Bank of Kentucky and the Louisville Trust Company held by Henry Vogt, Thomas J. Minary, Stuart E. Duncan, Allen P. Dodd, Charles H. Bohmer and Ben J. Metcalfe, as Trustees under a certain Trust Agreement, dated April 22nd, 1927.

Defendant says that the National Bank of Kentucky was and is a national banking association, organized under the laws of the United States, and on November 16, 1930, by resolution of its Board of Directors said bank was closed, and on November 17, 1930, the Comptroller of the Currency of the United States appointed Paul C. Keyes, Receiver of said bank. Said Keyes later resigned as receiver and A. M. Anderson was appointed by the Comptroller in said Keyes' place and substituted as a party in the suit hereafter referred to.

Thereafter on the 20th day of February, 1931, J. W. Pole, as Comptroller of the Currency of the United States, levied and made an assessment upon the stockholders of the National Bank of Kentucky of one hundred per cent, amounting in all to \$4,000,000.

On the 24th day of November, 1930, the Jefferson Circuit Court, Chancery Branch, Second Division, sitting at Louisville, Kentucky, in the case pending before said Court, appointed Joseph S. Laurent, Receiver of the Banco-Kentucky Company, and said Laurent thereafter qualified and gave bond in the amount required by the Court and continued to act as said receiver.

Thereafter said Paul C. Keyes, as Receiver, filed an action against Joseph S. Laurent, Receiver of the Banco-Kentucky Company, on said assessment and in said action claimed that the Banco-Kentucky Company was the holder and owner of 540,484 Trustees' Participation Certificates, which Trustees' Participation Certificates were issued under the terms of a certain Trust Agreement of April 22nd, 1927, and sought judgment for the full amount of said assessment.

Defendant says that these are the identical Trustees' Participation Certificates issued by the six Trustees above named.

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Defendant says that none of the National Bank of Kentucky stock, represented by said 540,484 Trustees' Participation Certificates, stood in the name of the Banco-Kentucky Company, but all of said stock was registered on the books of the National Bank of Kentucky in the name of the six Trustees above referred to.

Defendant says that said action of Paul C. Keyes, as Receiver, involved the liability of said Banco-Kentucky Company in its corporate matters, which were within its charter powers.

Defendant says that said action was defended by Banco-Kentucky Company, by said Laurent, Receiver of the Banco-Kentucky Company, but an opinion was rendered in said action, holding that the Banco-Kentucky Company was the actual and real owner of all of said National Bank of Kentucky stock represented by said 540,484 Trustees' Participation Certificates and therefore liable to said assessment, and a finding of fact was made therein to the same effect, and a judgment rendered against said Banco-Kentucky Company of one hundred per cent assessment against all the National Bank of Kentucky stock represented by said Trustees' Participation Certificates.

Thereafter said action was appealed by the Banco-Kentucky Company to the Circuit Court of Appeals, for the Sixth Circuit, and the holding of the lower court, to the effect that the Banco-Kentucky Company was the beneficial owner of all of said National Bank of Kentucky stock represented by said Trustees' Participation Certificates, approved and said judgment of assessment affirmed.

Defendant says that he owned no stock in the National Bank of Kentucky, and that his only relationship, if any, to any National Bank of Kentucky stock was the ownership of stock in the Banco-Kentucky Company.

Defendant says that the assessment sought to be maintained against him and other defendants in this action arises out of the identical shares of stock held and owned by the Banco-Kentucky Company involved in the suit of Keyes (later Anderson) against Laurent, and for which a judgment was rendered in favor of said plaintiff.

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Defendant pleads and relies upon the judgment as rendered in the above case as determinative of the ownership of the stock of the National Bank of Kentucky involved in this action.

PARAGRAPH IV.

The defendant says that the cause of action set out in the Bill of Complaint is barred by Section 2515, Kentucky Statutes, which requires that an action upon a liability created by statute, when no other time is fixed by the statute creating the liability, and an action for relief on the ground of fraud shall be commenced within five years next after the cause of action accrued, and she pleads and relies upon said statute in bar of plaintiff's action.

WHEREFORE, having fully answered, the defendant prays to be hence dismissed, with her costs herein expended, and for all further and proper relief.

REPLY OF A. M. ANDERSON TO ANSWER OF DAVID J. ABBOTT

(It is agreed that this Reply shall be considered Plaintiff's Reply to the Substituted Answer of Katherine Kirkpatrick Abbott.)

(Filed February 16, 1937)

Plaintiff, A. M. Anderson, Receiver of the National Bank of Kentucky, for reply to the allegations of the twenty-seven grammatical paragraphs set out in Paragraph II (pp. 7 to 16) of the answer of the defendant, David J. Abbott, says:

(1st Gram. Par., p. 7.) Plaintiff admits the allegations in the 1st grammatical paragraph.

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(2nd Gram. Par., p. 7.) Plaintiff states that the Banco Kentucky Company was incorporated pursuant to the plan and for the purpose alleged in Paragraphs XI, XII, XIII and XIV, of plaintiff's bill of complaint.

(3rd Gram. Par., p. 8.) Plaintiff admits the allegations contained in said paragraph.

(4th Gram. Par., p. 9.) Plaintiff admits the allegations contained in said paragraph.)

(5th Gram. Par., p. 9.) Plaintiff admits the allegations contained in said paragraph.

(6th Gram. Par., p. 9.) Plaintiff denies the allegations contained in said paragraph.

(7th Gram. Par., p. 9.) Plaintiff states that the defendant was one of the real, true and beneficial shareholders of the National Bank of Kentucky. Plaintiff admits that said defendant never had any certificates of stock issued by the National Bank of Kentucky registered in his name or any trustees certificates registered in his name. Plaintiff states that the defendant by virtue of his ownership of stock of the Banco Kentucky Company and by reason of the facts alleged in the petition was a real, true and beneficial shareholder of stock of the National Bank of Kentucky.

(8th Gram. Par., p. 10.) Plaintiff admits the allegations contained in said paragraph.

(9th Gram. Par., p. 10.) Plaintiff states that the plan and intention of the organizers of Banco Kentucky Company is set out in Paragraphs XI, XII, XIII and XIV of the petition. Plaintiff admits that approximately 400,000 shares of Banco Kentucky Company stock was subscribed for at Twenty-five (\$25.00) Dollars per share and plaintiff admits that Nine Million, Eight Hundred Sixty-nine Thousand, Six Hundred and Fifty (\$9,869,650.00) Dollars was received by the Banco Kentucky Company by virtue of such subscriptions. Plaintiff denies all other allegations contained in said paragraph.

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(10th Gram. Par., p. 10.) Plaintiff denies the allegations contained in said paragraph.

(11th Gram. Par., p. 10.) Plaintiff admits the allegations contained in said paragraph.

(11th Gram. Par., p. 11.) Plaintiff denies that after the receivership of the National Bank of Kentucky W. T. ZurSchmiede was cashier of the bank and plaintiff denies that after the appointment of a receiver for the Banco Kentucky Company said W. T. ZurSchmiede was secretary of said Banco Kentucky Company. Plaintiff admits all of the other allegations contained in said paragraph.

(13th Gram. Par., p. 11.) Plaintiff says that his predecessor, Paul C. Keyes, had access to many of the books and records of said Banco Kentucky Company and examined such books and records as were available and plaintiff admits that as such receiver his predecessor had a list of the stockholders of the Banco Kentucky Company. Plaintiff denies that he or his predecessor had access to all of the records and papers of the Banco Kentucky Company. Plaintiff denies all other allegations contained in said paragraph.

(14th Gram. Par., p. 11.) Plaintiff admits the allegations contained in said paragraph.

(15th Gram. Par., p. 11.) Plaintiff denies that the records of the National Bank of Kentucky showed three classes of stockholders, if by said allegation defendant intends direct and immediate holders of certificates of stock issued by said National Bank of Kentucky. Plaintiff states that the stock register of the National Bank of Kentucky shows that the stock was outstanding in the names of the individuals serving as directors and in the names of six trustees. Plaintiff states that the stock registered in the names of the directors was transferred to them for the simulated purpose of complying with the National Bank-

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ing Act but plaintiff states that said directors agreed at the time of said transfer to endorse said stock and to re-deliver the same to said six trustees, and plaintiff says that said directors did actually endorse said stock and re-deliver the same to said six trustees, and plaintiff states that said directors signed agreements transferring the dividends on said certificates to said trustees. Plaintiff states that said transfer and re-transfer was in violation of the National Banking Act and was all performed for the purpose of consummating the control and ownership of the National Bank of Kentucky by the defendants and other shareholders of the Banco Kentucky Company who were the real and beneficial owners of stock of said national bank.

(16th Gram. Par., p. 12.) Plaintiff admits the allegations contained in said paragraph but plaintiff states that the books and records of said bank showed who were the holders of Trustees Participation Certificates and also showed who were the stockholders of the Banco Kentucky Company.

(17th Gram. Par., p. 12.) Plaintiff admits the allegations contained in said paragraph.

(18th Gram. Par., p. 12.) Plaintiff admits that no attempt was made to collect said assessment from the trustees but plaintiff denies that the reason therefor was properly or correctly set out in the answer of the defendant.

(19th Gram. Par., p. 12.) Plaintiff denies the allegations contained in said paragraph.

(20th Gram. Par., p. 12.) Plaintiff admits that his predecessor, Paul C. Keyes, filed an action in this court, numbered 1383, but plaintiff denies all other allegations contained in this said paragraph and plaintiff specifically denies that any election was made by virtue of the filing of said suit or by virtue of the proceedings taken in said action.

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(21st Gram. Par., p. 13.) Plaintiff admits that the quoted matter appearing at pages 13, 14 and 15 of the defendant's answer are excerpts from the petition in said action No. 1383. For fuller reference to said petition, plaintiff refers to the printed copy of the transcript of record in said cause which has been filed in this court by the defendant along with his amended answer; but plaintiff denies that the allegations contained in said previous action are material to the present suit and plaintiff moves to strike from the record all reference to said prior suit.

(22nd Gram. Par., p. 15.) Plaintiff admits that judgment was secured in the sum of Three Million, Seven Hundred Seventy-two Thousand, One Hundred Sixty-two and 40/100 (\$3,772,162.40) Dollars, with interest in the action above referred to. For further particularity concerning said judgment plaintiff refers to the record in said action. Plaintiff says that the allegations of the paragraph in defendant's answer herein referred to are immaterial and irrelevant to the issues and plaintiff moves the court to strike said paragraph.

(23rd Gram. Par., p. 15.) Plaintiff denies that it secured a finding of fact as set out in said paragraph but plaintiff admits that the court made such a finding of fact and plaintiff further says that said findings are immaterial and irrelevant to the issues in the present suit and plaintiff moves that said allegations be stricken.

(24th Gram. Par., p. 16.) Plaintiff denies that it secured a finding of law as set out in said paragraph but plaintiff admits that the court made such a finding of law and plaintiff states that the allegation in said paragraph is immaterial and irrelevant to the issues set forth in plaintiff's bill of complaint and moves the court to strike said allegations.

(25th Gram. Par., p. 16.) Plaintiff admits that the Receiver of Banco Kentucky Company appealed said action

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to the United States Circuit Court of Appeals for the Sixth Circuit and plaintiff states that the argument on said appeal was in accordance with the allegations set out in the petition filed in said previous action; plaintiff further says that the allegations contained in the paragraph of defendant's answer herein referred to are immaterial and irrelevant to the issues set forth in the bill of complaint in this suit and plaintiff further moves the court to strike said paragraph.

(26th Gram. Par., p. 16.) Plaintiff admits that the Circuit Court of Appeals for the Sixth Circuit affirmed the decision in said action at law. Plaintiff refers the court to the opinion of said Circuit Court of Appeals, reported in 72 Fed. 2nd 819, for the reasons assigned by said court in affirming said judgment. Plaintiff says that the allegations of said paragraph are immaterial and irrelevant to the issues in the present suit and therefore moves the court to strike said paragraph.

(27th Gram. Par., p. 17.) Plaintiff denies that any action of this plaintiff or his predecessor, Paul C. Keyes, constituted an election of remedies or a bar to this suit against the defendant, David J. Abbott.

PARAGRAPH III.

For reply to the allegations set out in the 15 grammatical paragraphs contained in Paragraph III (pages 17 to 20) of the answer of the defendant, David J. Abbott, plaintiff says:

(1st Gram. Par., p. 17.) Plaintiff admits that Banco-Kentucky Company was organized under the laws of Delaware on July 16, 1929, but plaintiff denies that said corporation ever functioned as an independent corporation and plaintiff says that said corporation was organized and conducted as a corporate entity and instrumentality of the

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shareholders of the National Bank of Kentucky and the Louisville Trust Company.

(2nd Gram. Par., p. 17.) Plaintiff admits the allegations contained in said paragraph.

(3rd Gram. Par., p. 17.) Plaintiff denies the allegations contained in said paragraph. Plaintiff states that 540,384 Trustees Participation Shares out of a total of 570,550 of said Trustees Participation Shares were transferred by the holders thereof for stock in the Banco Kentucky Company pursuant to the plan and for the purposes set out in Paragraphs XI, XII and XIII of the plaintiff's bill of complaint and plaintiff states that said transferors remained at all times the real and beneficial owners of the stock of the National Bank of Kentucky.

(4th Gram. Par., p. 18.) Plaintiff admits the allegations contained in said paragraph.

(5th Gram. Par., p. 18.) Plaintiff admits the allegations contained in said paragraph.

(6th Gram. Par., p. 18.) Plaintiff admits the allegations contained in said paragraph.

(7th Gram. Par., p. 18.) Plaintiff admits that Paul C. Keyes as Receiver of the National Bank of Kentucky filed an action against Joseph S. Laurent, Receiver, to recover on an assessment and plaintiff states that said action was docketed in this court as No. 1383; for more complete reference thereto plaintiff refers to the allegations contained in the petition in said action as set out in the transcript attached to defendant's answer.

(8th Gram. Par., p. 19.) Plaintiff admits that the Trustees Participation Certificates referred to in said prior action are the 540,484 Trustees Participation Certificates referred to in Paragraph II of plaintiff's bill of complaint.

(9th Gram. Par., p. 19.) Plaintiff admits that the certificates of stock issued by said National Bank of Kentucky,

Reply to Answer of David J. Abbott

represented by said Trustees Participation Certificates, stood in the name of said Trustees upon the books of said bank.

(10th Gram. Par., p. 19.) Plaintiff states that the 10th grammatical paragraph contained in defendant's answer contains a question of law and plaintiff neither denies nor admits the same, but plaintiff refers to the transcript of record in said cause. Plaintiff says that said allegation is irrelevant and immaterial to the issues in this suit and moves the court to strike the same.

(11th Gram. Par., p. 19.) Plaintiff admits that said action was defended by Laurent as Receiver of Banco-Kentucky Company and that an opinion was rendered in said action and that a finding of fact was made therein and that a judgment was rendered against the Banco-Kentucky Company. Plaintiff refers the court to said opinion and the record in said cause for more complete answer to the allegations contained in the petition referred to but plaintiff says that the allegations in said paragraph are immaterial and irrelevant to the issues in this suit and moves the court to strike the same.

(12th Gram. Par., p. 19.) Plaintiff admits that said action was appealed to the Circuit Court of Appeals for the Sixth Circuit of the United States and that the findings of fact and conclusions of the trial court were approved and the judgment affirmed. Plaintiff refers the court to the transcript of the record in said action and to the opinion of the Circuit Court of Appeals for the matters therein determined. Plaintiff further says that the allegations set forth in said paragraph are immaterial and irrelevant to the issues in this suit and moves the court to strike the same.

(13th Gram. Par., p. 20.) Plaintiff denies that defendant never owned stock in the National Bank of Kentucky.

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Plaintiff states that the defendant was the real, actual and beneficial owner of stock of the National Bank of Kentucky, as set out in plaintiff's bill of complaint. Plaintiff admits that the defendant never had any certificates of stock issued by the National Bank of Kentucky recorded in his name.

(14th Gram. Par., p. 20.) Plaintiff admits that the claims sought to be enforced against the defendant, David J. Abbott, and the other defendants in this action arises out of the same stock of the National Bank of Kentucky represented by the Trustees Participation Certificates registered in the name of the Banco Kentucky Company and involved in the action styled *Keyes v. Laurent*, in which action judgment was rendered in favor of the plaintiff.

(15th Gram. Par., p. 20.) Plaintiff denies that the judgment in said action was determinative of any of the issues involved in this suit and moves the court to strike from the answer of the defendant, David J. Abbott, all reference to said action or to any proceedings had therein.

Wherefore, having fully replied, plaintiff renews the prayer set forth in his bill of complaint.

**ANSWER OF G. A. HEUSER, EXECUTOR OF THE
ESTATE OF HENRY VOGT, DECEASED, WILLIAM
S. SPEED, SAUNDERS P. JONES, ALLAN P. DODD,
ET AL., SIMILARLY SITUATED**

(Filed December 7, 1937, and refiled February 3, 1939)

Paragraphs I and II of this answer are substantially the same as Paragraphs I and II of the substituted answer of Katherine Kirkpatrick Abbott, Administratrix of the Estate of David J. Abbott, deceased, and are, therefore, omitted.

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PARAGRAPH III

Defendant, for further answer herein, says that the BancoKentucky Company was a corporation organized under the laws of the State of Delaware on July 16th, 1929, and thereafter continued to function as an independent corporation.

Defendant says that the Articles of Incorporation of said BancoKentucky Company contain the following provision:

"Third: The nature of the business or objects or purposes proposed to be transacted, promoted or carried on are:

"The acquiring by purchase or otherwise of all or any portion of the capital stock, property, assets and franchises of any or all corporations transacting business in any State of the United States; the purchasing, holding, selling, assigning, transferring, mortgaging, pledging or otherwise disposing of shares of the capital stock of or any bonds, securities or evidence of indebtedness created by or issued by any other corporation or corporations organized under the laws of any State of the United States or of any foreign country and while the owner thereof to exercise all the rights, powers and privileges of ownership; the purchasing or otherwise acquiring of any promissory notes or other evidences of indebtedness executed by any person, firm, association or corporation; the financing, managing or operating of any commercial or manufacturing business or enterprise; the underwriting of any issue of stocks, bonds, debentures or other securities issued by any corporation; the charging of fees or commissions for any or all services rendered or advice or assistance given to any person, firm, association or corporation; acquiring and paying for in cash, stock or bonds of this corporation or otherwise, the good will, rights, assets and property of any person, firm, association or corporation and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm or corporation."

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Defendant says that the Banco Kentucky Company, pursuant to the authority contained in its Articles of Incorporation above quoted, acquired by purchase or exchange all of the Trustees' Participation Certificates, representing stock in the National Bank of Kentucky and the Louisville Trust Company held by Henry Vogt, Thomas J. Minary, Stuart E. Duncan, Allen P. Dodd, Charles H. Bohmer and Ben J. Metcalfe, as Trustees under a certain Trust Agreement, dated April 22nd, 1927.

Defendant says that the National Bank of Kentucky was and is a national banking association, organized under the laws of the United States, and on November 16, 1930, by resolution of its Board of Directors said bank was closed, and on November 17, 1930, the Comptroller of the Currency of the United States appointed Paul C. Keyes, Receiver of said bank. Said Keyes later resigned as receiver and A. M. Anderson was appointed by the Comptroller in said Keyes' place and substituted as a party in the suit hereafter referred to.

Thereafter on the 20th day of February, 1931, J. W. Pole, as Comptroller of the Currency of the United States, levied and made an assessment upon the stockholders of the National Bank of Kentucky of one hundred per cent, amounting in all to \$4,000,000.

On the 24th day of November, 1930, the Jefferson Circuit Court, Chancery Branch, Second Division, sitting at Louisville, Kentucky, in the case pending before said Court, appointed Joseph S. Laurent, Receiver of the Banco-Kentucky Company, and said Laurent thereafter qualified and gave bond in the amount required by the Court and continued to act as said receiver.

Thereafter said Paul C. Keyes, as Receiver, filed an action against Joseph S. Laurent, Receiver of the Banco-Kentucky Company, on said assessment and in said action

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claimed that the BancoKentucky Company was the holder and owner of 540,484 Trustees' Participation Certificates, which Trustees' Participation Certificates were issued under the terms of a certain Trust Agreement of April 22nd, 1927, and sought judgment for the full amount of said assessment.

Defendant says that these are the identical Trustees' Participation Certificates issued by the six Trustees above named.

Defendant says that none of the National Bank of Kentucky stock, represented by said 540,484 Trustees' Participation Certificates, stood in the name of the BancoKentucky Company, but all of said stock was registered on the books of the National Bank of Kentucky in the name of the six Trustees above referred to.

Defendant says that said action of Paul C. Keyes, as Receiver, involved the liability of said BancoKentucky Company in its corporate matters, which were within its charter powers.

Defendant says that said action was defended by BancoKentucky Company, by said Laurent, Receiver of the BancoKentucky Company, but an opinion was rendered in said action, holding that the BancoKentucky Company was the actual and real owner of all of said National Bank of Kentucky stock represented by said 540,484 Trustees' Participation Certificates and therefore liable to said assessment, and a finding of fact was made therein to the same effect, and a judgment rendered against said BancoKentucky Company of one hundred per cent assessment against all the National Bank of Kentucky stock represented by said Trustees' Participation Certificates.

Thereafter said action was appealed by the BancoKentucky Company to the Circuit Court of Appeals, for the Sixth Circuit, and the holding of the lower court, to

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the effect that the BancoKentucky Company was the beneficial owner of all of said National Bank of Kentucky stock represented by said Trustees' Participation Certificates, approved and said judgment of assessment affirmed.

Defendant says that his testator owned no stock in the National Bank of Kentucky, and that testator's only relationship, if any, to any National Bank of Kentucky stock was the ownership of stock in the BancoKentucky Company.

Defendant says that the assessment sought to be maintained against his testator and other defendants in this action arises out of the identical shares of stock held and owned by the BancoKentucky Company involved in the suit of Keyes (later Anderson) against Laurent, and for which a judgment was rendered in favor of said plaintiff.

Defendant pleads and relies upon the judgment rendered in the case herein referred to as a conclusive determination of the ownership of the stock of the National Bank of Kentucky involved in this case and as an estoppel by judgment of record or *res judicata* of the claims asserted herein.

WHEREFORE, having fully answered, defendant prays that the Bill of Complaint be dismissed, for his costs herein expended, and for all proper relief.

PARAGRAPH IV

The first literary paragraph of Paragraph IV of said answer alleges that the defendant was a director of the National Bank of Kentucky prior to the closing of said Bank November 16, 1930; that on that date he owned ten shares of the stock of the National Bank of Kentucky and that, upon the levying of the assessment upon the shareholders of said Bank, he paid the assessment on the said ten shares.

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Paragraph IV of said answer continues as follows:—

Defendant says that following the closing of the National Bank of Kentucky Paul C. Keyes was appointed by the Comptroller of the Currency as receiver of said National Bank of Kentucky. This is the same Keyes referred to on page 3 of the Bill of Complaint herein.

Thereafter, to wit, on March 30, 1931, said Paul C. Keyes, as Receiver of the National Bank of Kentucky, brought an action in the United States District Court, for the Western District of Kentucky, numbered 649 in Equity, against this defendant, and the other directors of said National Bank of Kentucky.

Said action sought to recover a judgment against this defendant and the other directors of the National Bank of Kentucky on account of various loans made and transactions entered into by said bank.

Defendant says that among the issues raised in said suit was the issue of whether the BancoKentucky Company was a corporation independent of the National Bank of Kentucky and whether the stock of said BancoKentucky Company was the same in law or equity as the stock of the National Bank of Kentucky, and whether the BancoKentucky Company was merely the alter ego of the Bank of Kentucky, or was a sham corporation that a court would look through in order to determine whether the stock of said BancoKentucky Company was the equivalent of the stock of said National Bank of Kentucky.

The issues so raised are fully set out in Paragraphs 328 to 385, inclusive, in the Bill of Complaint filed in said action.

Defendant says that thereafter proof was heard on said questions and a decision was rendered upon same by the Master appointed by the Federal District Court holding that said BancoKentucky Company was not the same as

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the National Bank of Kentucky and that the stock of said Banco Kentucky Company was not the same as the stock of said National Bank of Kentucky.

Thereafter the District Court for the Western District of Kentucky in the same cause held that loans made upon the stock of Banco Kentucky Company were in violation of Section 5201 Revised Statutes, Section 83, Title 12, U. S. C. A., providing that "no association shall make any loan or discount on the security of the shares of its own capital stock," as being loans on the security of its own capital stock and rendered a judgment against this defendant's testator and the other directors on the basis of their participation in a violation of the statute by the approval of said loans.

Defendant says that this defendant and the other directors of the National Bank of Kentucky appealed said holding to the United States Circuit Court of Appeals, for the Sixth Circuit, and on said appeal said Circuit Court of Appeals reversed the ruling of the District Court and held, among other things, the following (Opinion pp. 27-33):

"On July 16, 1929, Banco was incorporated under the laws of Delaware, and authorized to issue two million shares of the par value of \$10.00 each. The broadest powers available under the laws of Delaware were obtained, and on July 19th the officers and directors of the bank and those of the Louisville Trust Company, addressed to holders of trust participation certificates a letter setting forth the plan of organization. Banco stock was to be sold at not less than \$25.00 per share, but two shares of Banco were to be exchanged for each trust participation certificate. Since these certificates represented bank and trust company stock having a book value of \$16.46, the proposal was an attractive one, resulting in the great majority of participation certificate holders making the exchange. There followed also an active campaign by officers and em-

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ployees of both the bank and the trust company to promote the sale of Banco shares, as a result of which 394,786 shares of Banco were sold, and \$9,869,650 paid into the treasury of the new corporation. Its stock was listed upon the Chicago Exchange, and reached \$32.00 per share, though inference is warranted that market quotations were considerably influenced by transactions manipulated by Brown through Wakefield & Company.

"From September 26, 1929, to the date of the Bank's suspension, numerous loans were made by the bank, approved by its directors, to finance the purchase of Banco shares. In all, approximately \$4,000,000 was loaned by the bank on notes secured wholly or in part by shares of Banco, most of the loans being approved after October 1, 1929.

"Prior to September 11, 1929, negotiations had been begun by the BancoKentucky Company for the purchase of two Cincinnati banks, the Pearl Market Bank & Trust Company and the Brighton Bank & Trust Company, and on September 25, 1929, a contract for the purchase of a controlling interest in each was concluded—though they were actually taken over some time later. The consideration included shares of Banco, which on the basis of \$25.00 per share represented a total of \$2,159,875. When most of the assailed loans were made on Banco stock the situation was substantially as follows: Banco owned 470,000 of a total of 575,000 trust participation certificates representing ownership of stock in the Bank and in the Louisville Trust Company, it had subscriptions to its own stock in the amount of \$10,000,000, on which \$5,784,875 had been paid by October 1, 1929, and \$9,222,451.21 by October 10, 1929, and it had concluded the purchase of a controlling interest in the two Cincinnati banks. The master accordingly found that 'It was thus clearly not contemplated in the beginning, or intended at any time, that the BancoKentucky Company should be organized merely as a holding company for the stock of the National Bank of Kentucky,' a finding not rejected by the District Judge.

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"The failure of the Banco Kentucky Company followed by but a few days the closing of the Bank. Whether the second catastrophe was a consequence of the first, or both the inevitable result of the financial debacle of the period invites interesting but for our purpose idle speculation. What is important is that many of the loans made on Banco stock became uncollectible and the security insofar as it consisted of such stock worthless. The legal basis for the liability asserted against the appellants for resulting loss is Sec. 5201 R. S., being Sec. 83, Title 12, U. S. C. It provides that 'No association shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith.' While Sec. 83 provides no penalty, Sec. 93, already recited in another connection, is applicable to all violations of the statute. It imposes a civil liability on all directors who knowingly violate or knowingly permit a violation of any of its provisions.

"It has been said that, 'Where a statute creates a duty and prescribes a penalty for non-performance, the rule prescribed in the statute is the exclusive test of liability.' *Yates v. Jones National Bank*, supra, 179. Whether these sections of the statute are therefore penal, requiring strict construction, as has sometimes been indicated (*Chase v. Curtis*, 113 U. S. 452; *Park Bank v. Remsen*, 158 U. S. 337), or whether, since they give a civil remedy at the private suit of the receiver for the benefit of stockholders and depositors, with damages measured by the losses consequentially suffered, they are in this respect remedial (*Huntington v. Attrill*, 146 U. S. 657; cf. *Brady v. Daly*, 175 U. S. 148, 155), we need not determine. In either view a statute that is clear and unambiguous requires, under familiar rules, no straining of its terms, either to include within its condemnation offenses or persons other than those which are clearly prescribed and provided for, or to exclude from its operation offenses which

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the words, in their ordinary acceptation, would comprehend.

"The decree awarded damages for all losses suffered by the bank in consequence of loans made on Banco stock, not only on the court's assumption that the relation of the two corporations was such that equity must ignore the separate corporate existence of Banco and treat its stock as in substance and effect the stock of the bank, but also on the ground that the very words of the statute require an adjudication of liability. The latter conclusion was based on the use in the statute of the phrase 'on the security of the shares of its own capital stock.' If we follow the argument in this respect, it means that all loans are invalid whose security is supported to any extent by the value of the stock of the lending bank, whether deposited as collateral or not, for the point is made that loans are forbidden not merely on certificates representing shares of the bank's capital, nor yet on the shares themselves, but on the security of its shares. Statutory construction, however, even where required, must by all accepted canons of interpretation be reasonable, and even were we to assume ambiguity, a reading of the words of the act must be rejected which leads upon analysis to unreasonable if not indeed to absurd results, and establishes such standard of duty for bank directors that either compliance becomes wholly impossible or risk of violation so great that honest men will not assume it.

"If invalidity attaches to every loan for the repayment of which recourse may ultimately be required to assets of the debtor which include stock of the lending bank, and that is in essence the meaning sought to be given to the phrase 'on the security of the shares of its own capital stock' then all loans are suspect, regardless of the financial standing of the debtor or the intrinsic worth of his collateral. The directors must at their peril ascertain whether securities offered as collateral, including not only stocks but bonds and mortgages, are those of a corporation owning stock of

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the bank or of a corporation which holding no bank stock itself, owns shares in other corporations which do. The bank may not loan to its own stockholders, individual or corporate, with or without security, for ultimately it may have to acquire its own stock either by foreclosure of collateral or upon execution levy. That no such meaning may, however, be ascribed to the phrase in question is indicated by the very language which follows it, to wit, 'unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith.'

"It is common knowledge that when in 1933 the banks were closed by executive order, some never to reopen, a number of large industrial corporations relieved the financial paralysis induced thereby in localities within their sphere of influence by establishing new banks, with the aid and encouragement of the banking authorities. Had it been thought at that time that the stock of such corporations, by reason of their ownership of bank stock, would be made unavailable as collateral with the banking facility thus provided, especially at a time of greatest necessity for stockholders, there is reason to doubt that this aid to stricken communities would have been forthcoming, for the interpretation now urged if then accepted would have inevitably prevented the exercise of private corporate initiative in the public interest, and have accentuated consequences already grievous. We are unable for another reason also to conclude that Sec. 83 in terms forbids loans on corporate securities other than the shares of the bank's own capital stock whatever may be the holding of such stock by the corporation issuing such securities. Section 5137 of the Banking Act, Title 12, Sec. 29, U. S. C., until amended in June 1933, prohibited loans on the security of real estate. *National Bank v. Mathews*, 98 U. S. 621. It had not been thought, however, that this prohibition extended to the stock of corporations owning real estate. *Baldwin v. Canfield*, 26 Minn. 43; *Western Improvement Co. v. Des Moines National Bank*, 103 Ia.

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455; cf. *National Bank v. Mathews*, supra; *National Bank v. Whitney*, 103 U. S. 109; *Fortier v. New Orleans Bank*, 112 U. S. 439; *Gamble v. Brown*, 29 Fed. (2d) 366 (C. C. A. 4), cert. denied 279 U. S. 366. Nor can any distinction be made between the shares of corporations holding a little stock in the bank and those holding much, for as the court below well said: 'This statute does not deal with degrees . . . the prohibition (if it exists) is absolute.'

"We come then to the question whether the relation between the bank and the Banco Kentucky Company was such that a court of equity would be warranted in disregarding the existence of Banco as a separate corporate entity. It is true that Banco was conceived in the vaulting imagination of the president of the bank; that it was promoted and fostered by the appellants; that the directorates of the two corporations, though not identical, overlapped; that the great majority of trust participation certificates representing stock in the bank became the property of Banco, and that there is a suggestion of identity in the name adopted for the new company. But Banco was not a mere holding company for the bank's stock. It was organized for clearly defined purposes, too optimistically conceived; perhaps, but neither illegitimate nor unlawful. It had its own capital with cash resources at one period almost twice the entire capital and surplus of the bank. While in the very beginning the bank stock may, as found by the court, have been its principal asset, and may have continued thereafter to be its most valuable single asset, it had other assets of very substantial value, and it was warrantable inference at the time of its organization and for a substantial period thereafter that it could well meet any assessment that might be levied upon it as a stockholder of the bank. At any rate there is nothing in the record to point to its creation for the purpose of escaping such assessment. Indeed when the assessment was finally made by the Comptroller it was enforced against Banco and not against the stockholders. See

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Laurent v. Anderson, supra. Its separate corporate existence was recognized by the very receiver on whose behalf we are now asked to ignore it.

"The circumstances under which one corporation will be held to be but the alter ego of another were recently fully considered by us in *Shepherd, Trustee, v. Banking & Trust Co.*, 79 Fed. (2d) 767, 769. We there approved the doctrine of *Pittsburgh & Buffalo Co. v. Duncan*, 232 Fed. 584, 587 (C. C. A. 6), to the effect that: 'The mere fact, that the stockholders in two or more corporations are the same, or that one corporation exercises a control over the other through ownership of its stock, or through identity of its stockholders, does not make either the agent of the other, nor does it merge them into one . . . where each corporation is separately organized under a distinct charter' and likewise gave approval to the exceptions to this general rule announced in *New York Trust Co. v. Carpenter*, 250 Fed. 668, 672 (C. C. A. 6), and approved in *Hooper-Mankin Co. v. Mathew Addy Co.*, 4 Fed. (2d) 187, 189 (C. C. A. 6), where it was said:

" 'From an examination of many decisions, we venture to say that no corporation acting within its powers has been held liable for the debts of another corporation legally organized, because it controls such corporation by reason of ownership of its stock, or otherwise, except by reason of contract or on grounds of agency, or of estoppel, or because the controlled corporation has been used in such a way that the maintenance of its character as a separate and distinct entity would work injustice.' "

"The principle has been affirmatively stated in the Ninth Circuit (*Martin v. Development Co. of America*, 240 Fed. 42) thus: 'A holding corporation has a separate existence and is to be treated as a separate entity, unless facts are averred which show that such separate corporate existence is a mere sham, or has been used as an instrument for concealing the truth, or where

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the organization and control are shown to be such that it is but an instrumentality of another corporation.'

"The BancoKentucky Company was certainly not a sham, for nearly ten million dollars of actual cash paid for its stock attest its reality, and there is nothing in the record to point to it as an instrumentality of the bank. Nor was it organized for a fraudulent purpose or to conceal secret or sinister enterprises conducted for the benefit of the bank. The master absolved the appellants of all suspicion of bad faith and the court approved his finding in the last of three carefully reasoned opinions (11 Fed. Supp. 9, 14). Certainly we must accept this as the deliberate judgment of the court rather than as a euphemism, easing the blow to the sensibilities as it fell heavily upon the purse.

"The decree must be reversed insofar as it awards damages against any of the appellants for losses suffered by the bank in consequence of loans on shares of the BancoKentucky Company."

Further amending their answer herein, and for supplement thereto, the defendants file herewith as a part hereof a complete copy of the pleadings and exhibits filed in Equity Action No. 649, and mark the same for identity Exhibit "A." (See Dfts. Exhibit 1.)

In said bill in action No. 649, the plaintiff, among other things, sought recovery against the defendant directors of the National Bank of Kentucky, as one of his causes of action therein asserted, for \$2,250,000.00 upon the ground that said directors had approved loans made by the National Bank of Kentucky on the security of the capital stock of the BancoKentucky Company in violation of Section 83, Title "Banks and Banking" of the United States Code, in that loans upon BancoKentucky Company stock were loans upon stock of the National Bank of Kentucky, and that thereafter the said defendants filed an answer to said bill, denying the allegations of the bill with respect to each and

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every matter set forth therein in that particular, including the allegations of the bill with reference to the question as to whether or not the stock of the BancoKentucky Company was the same as the stock of the National Bank of Kentucky; likewise in said bill recovery was sought on the ground that the BancoKentucky Company was organized in fraud and promoted for the use and benefit of the stockholders of the National Bank of Kentucky, and for the personal benefit of the directors and stockholders of said company, and for the purpose of evading other sections of the United States Statutes; that said BancoKentucky Company was a mere holding company for the stock of the National Bank of Kentucky and Louisville Trust Company, the purpose of which was to divert funds from the bank for the enrichment of the stockholders engaged in ventures not permitted to said national bank under the laws of the United States. A true and correct copy of the original bill, giving the names of all the defendants, is set forth in Exhibit "A," beginning at page 1 thereof, the allegations with reference to BancoKentucky Company being Paragraphs 328 to 385, both inclusive, and appear at pages 104 to 121, both inclusive, of said Exhibit "A."

Upon the issues thus joined, proof was taken in support of said bill with reference to said BancoKentucky Company stock, and in support of the defenses interposed thereto by the directors of said bank, involving said questions and issues aforesaid, the Transcript of which proof is filed herewith as a part hereof and marked for identity Exhibits "B" and "B-1." (See Dfts. Exhibit 1.)

Exhibit "A" aforesaid was authenticated as being a true and correct copy of all the pleading and exhibits contained in the original bill, together with the answer and the matters therein set forth, by the plaintiff in said cause, who is the same person as the plaintiff in this cause, and

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likewise Exhibits "B" and "B-1" were authenticated as being a true and correct copy of the evidence heard with reference to BancoKentucky Company loans by the plaintiff in said cause.

They further say that after the said bill was filed and answer thereto filed, the said cause was referred to the Hon. William P. Sandidge, Special Master, who heard all of the proof in said cause and finally made his report on the issues of fact and questions of law presented with reference to said BancoKentucky Company aforesaid, which report of the Special Master is in Exhibit "A" aforesaid, and recorded at pages 236 to 533, both inclusive.

Both plaintiff and defendants filed exceptions to the report of the Special Master, and said cause came on to be heard before the Hon. Arthur J. Tuttle, sitting as Special Judge of the Federal District Court for the Western District of Kentucky, and after a full and complete hearing, rendered his opinion, which opinion with reference to said BancoKentucky Company matters hereinabove referred to is recorded in Exhibit "A" hereto, beginning at page 823.

The plaintiff in said suit against said directors aforesaid, as shown from Exhibit "A", at page 663, set forth his conception of the questions for decision by the District Court aforesaid as follows:

"(a) That all loans secured by BancoKentucky Company stock were illegal because in fact constituting loans on the security of stock of the Bank, within the meaning of the prohibition contained in Section 83 of the title Banks and Banking of the United States Code; and that defendant directors are liable for all resulting losses under Section 93 of such title Banks and Banking; and this, as decided by the courts in respect to other violations of law, without regard to the financial condition of the borrower, or the value

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of the security at the time the loan in question was made (subdivision 1-2, 34, Sec. 29 of Plaintiff's Bill);

“(b) That all loans on BancoKentucky Company stock, made to finance subscriptions and the payment of subscriptions to such stock, were illegal, because constituting temporary or permanent diversions of the funds of the Bank into the treasury of another corporation to enable such corporation to transact a business for the profit of the persons directly or indirectly owning the stock of the Bank, beyond the scope of the permission of the National Banking Act, and without the restrictions of such act, and ultra vires of the powers of a national bank;

“(c) That loans on BancoKentucky Company stock made to finance subscriptions and the payment of subscriptions to such stock, constituted temporary or permanent diversions of the funds of the bank, for the promotion and assistance of a corporation in which such defendant directors were pecuniarily largely interested, and which such defendant directors similarly directed and controlled, and from the payment to which of the subscription price (\$25) of each share of stock each defendant director individually profited because, among other reasons, he himself possessed a large quantity of such stock, the book or asset value of which was substantially increased by such cash payment of \$25.00 for the same, and constituted violations of the fiduciary duty of the defendant directors, inconsistent with ordinary care and fidelity in the handling of the funds of the Bank, and visiting upon them the consequences of all ensuing losses on such loans, irrespective of the financial condition of the borrowers at the time the loans were made (Subdivisions 34, 42, 44 of Sec. 29, and subdivision (n) of Sec. 293 of Plaintiff's Bill).”

They further say that pursuant to the opinion of said Judge of the Western District Court of Kentucky, certain findings of fact and conclusions of law were entered, and a decree based thereon, which findings of fact, conclusions

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of law and decree are found in Exhibit "A" hereto; the basis for the findings of fact and conclusions of law as well as for the decree with reference to loans on Banco-Kentucky Company stock was substantially as outlined and copied hereinabove.

Copies of all of the proceedings had in said court, all of the pleadings filed in said court, as well as all decrees entered in said court in said cause are set out in the Transcript marked Exhibit "A."

They further say that as shown from said Exhibit "A," an appeal was prosecuted to the Circuit Court of Appeals for the Sixth Circuit, came on to be heard before said Circuit Court of Appeals for the Sixth Circuit, and, on appeal, an opinion was rendered by said Sixth Circuit Court of Appeals, copy of which opinion is set forth in the Transcript of Record of the proceedings had in said cause in said Sixth Circuit Court of Appeals, which is filed herewith as a part hereof and marked for identity Exhibit "C"; that Exhibit "C" was likewise authenticated as a true and correct copy of said proceedings by the plaintiff in said equity action No. 649 aforesaid.

That thereafter an appeal was prosecuted from the judgment of the aforesaid Sixth Circuit Court of Appeals to the Supreme Court of the United States, and as result the said Supreme Court of the United States reversed said cause and remanded it to the said Sixth Circuit Court of Appeals with directions to take up and consider, among other things, the question of negligence with reference to loans made upon the stock of the Banco-Kentucky Company; a copy of the opinion of the Supreme Court of the United States is filed herewith as a part hereof and marked for identity Exhibit "C-1"; and the said Sixth Circuit Court of Appeals rendered its opinion on said question on the 16th day of November, 1938, copy of which opinion is

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filed herewith as a part hereof and marked for identity Exhibit "D."

Thereafter, and pursuant to the opinion of said Circuit Court of Appeals for the Sixth Circuit, the mandate was duly issued thereon and said cause was remanded to the District Court for the Western District of Kentucky, and an amended decree was entered pursuant to the aforesaid opinions of said Circuit Court of Appeals for the Sixth Circuit in the following language, to wit:

"It is adjudged that none of the nonofficer-directors of the National Bank of Kentucky of Louisville are liable to the plaintiff, under Section 93 of Chapter 2 of the Title, Banks and Banking of the United States Code, or on common law principles of negligence for the losses sustained by the Bank on account of moneys supplied on loans collateraled, in whole or in part, by stock of the Banco Kentucky Company and set out in Paragraph 45 of the original decree herein."

Defendants file herewith as a part hereof copy of said amended decree and mark the same for identity Exhibit "E."

They further say that said judgment so entered was a final judgment, is still in full force and effect and has never been modified or set aside, and no appeal has been prosecuted therefrom.

They further say that in the bill so filed, the said plaintiff, Paul Keyes, in the first instance, and A. M. Anderson, in the second instance, brought said suit for the use and benefit of the depositors and creditors of the National Bank of Kentucky, and that the said A. M. Anderson, who finally prosecuted said suit, as such Receiver, to its finality aforesaid, is the same A. M. Anderson who is prosecuting this suit, and that this suit was filed by A. M. Anderson for the use and benefit of the same persons for whom the said

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equity action No. 649 aforesaid was filed, and that the questions which were necessary to be determined with reference to BancoKentucky Company stock in said equity action No. 649 were:

(a) Whether or not the stock of the BancoKentucky Company was the same as the capital stock of the National Bank of Kentucky.

(b) Whether or not the BancoKentucky Company was a separate corporation, organized for a bona fide, legal and legitimate purpose, and such a distinct corporation that the courts were powerless to look through the corporate veil of said company to ascertain the character of its assets, or, to state it differently, whether the BancoKentucky Company was the alter ego of the National Bank of Kentucky.

(c) Whether or not the BancoKentucky Company was merely a holding company organized for the purpose of holding the stock of the National Bank of Kentucky and Louisville Trust Company.

(d) Whether or not the BancoKentucky Company was organized, came into existence and performed in violation of any of the Statutes of the United States of America.

(e) Whether or not the owners of the Trustees' Participating Receipts, issued under the Trust Agreement referred to in said proceedings, organized the BancoKentucky Company for their own personal and private enrichment and for the purpose of evading double assessment upon the Trustees' Participating Receipts.

(f) Whether or not the BancoKentucky Company was a sham corporation.

As is shown from the exhibits filed herewith as a part hereof, the plaintiff in that suit, being the same person as the plaintiff in this suit, introduced in support of the position of the plaintiff in that suit, all of the records of the

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National Bank of Kentucky, the records of the Banco-Kentucky Company, and substantially the same proof as has been introduced by plaintiff in support of his cause in this case, and that the foregoing issues and questions necessary to be decided in said action No. 649 aforesaid are the same issues that the plaintiff in this action is undertaking to relitigate in this proceeding, and the court, in said action No. 649, which court had jurisdiction to hear and determine all of said questions, decided each and all of said questions finally against the contentions and adverse to the plaintiff in that cause, and the plaintiff in that case represented, as such Receiver, all of the creditors and depositors of the National Bank of Kentucky at that time, who, and all of them, are the same persons who are depositors and creditors of the National Bank of Kentucky for and in whose behalf this proceeding was filed, and the decision of each and all of the foregoing questions of law and issues of fact by the court in that case was a complete adjudication by the court, which is binding and conclusive upon the plaintiff in this case, all of which questions are more particularly shown in said exhibits filed herewith; that by reason of all the foregoing facts the said plaintiff in that cause, who is the plaintiff in this cause, is now forever estopped from again relitigating each or any of said questions of law and issues of fact, which estoppel and res judicata these defendants now plead in bar of the plaintiff's right to further prosecute this action as against any of the defendants, non-officer directors in action No. 649, or against the personal representatives of any of said directors who have, since the filing of said action No. 649, died; that each and all of said non-officer directors sued in this cause are the same persons whose names appear herein and who were sued in the aforesaid action No. 649.

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PARAGRAPH V

Defendant says that after the closing of the Bank on March 30th, 1931, Paul C. Keyes, as Receiver of the National Bank of Kentucky, who has been succeeded as Receiver by A. M. Anderson, plaintiff herein, filed an action against this defendant and the other directors of the National Bank of Kentucky, in which some of the same issues that were involved in this suit were involved, that among other things was the solvency of the Bank at all times subsequent to 1926 and prior to and including October 1st, 1930; that the question arose in that case on the right of the directors of the National Bank of Kentucky to declare and pay dividends of \$160,000 each on April 1st, 1927, July 1st, 1927, October 1st, 1927, January 2nd, 1928, April 1st, 1928, July 1st, 1928, October 1st, 1928, January 2nd, 1929, April 1st, 1929, July 1st, 1929, October 1st, 1929, January 2nd, 1930, April 1st, 1930, July 1st, 1930, and October 1st, 1930.

Defendant says that the National Bank of Kentucky at all times during the above period had a capital stock of \$4,000,000 and a surplus of \$2,000,000; in addition to undivided profits; that the contention was made by the Receiver of the National Bank of Kentucky, that each of the dividends above declared was unlawful in that they violated Sections 56 and 60 of Title 12 of the United States Code, by paying a dividend out of the surplus of the Bank instead of out of undivided profits of the Bank. Evidence was offered upon said issue as to each dividend by both plaintiff and defendants in said cause and, after a full hearing before William P. Sandidge, the Special Master in said cause, said Special Master adjudged that said dividends had all been legally paid.

Thereafter exceptions were filed to said report by the Receiver of the National Bank of Kentucky and, after full

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arguments and briefs, the District Court of the United States, for the Western District of Kentucky, in which Court said suit was pending, likewise adjudged that said dividends were all properly paid, saying:

"The Master disallowed this claim in its entirety, finding that the evidence failed to show any facts indicating any statutory violation by any of the directors or any negligence on their part in connection with these dividends. The Master discussed and analyzed, at great length and in much detail, numerous debts which the plaintiff claims should have been charged off as statutory bad debts, and after painstaking and thorough consideration of such debts and of the other relevant facts and circumstances the Master found that the evidence did not sustain this claim of the plaintiff. To recite or review these details would unduly prolong this opinion and would serve no useful purpose. It is sufficient to say that the findings of the Master are convincingly supported by the record. It is entirely clear, and I find, that the witnesses on whom the plaintiff relied in this connection had no personal knowledge of the facts concerning which they assumed to testify. There is no competent evidence sufficient to sustain the burden resting on the plaintiff of proving that any of these dividends were paid out of capital of the bank or were not paid out of its net profits after deducting therefrom its losses and bad debts, including all debts on which interest was past due and unpaid for a period of six months and which were not well secured and all debts in process of collection." . . .

Defendant further says that there was no appeal from said judgment by the Receiver and that same is in full force and effect and is conclusive of the issue between the Receiver in this case and the parties to that suit.

Defendant further says that, among other issues tried in said cause, was the correctness of the Minute Book of the National Bank of Kentucky, covering the period from

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1927 to the close of the Bank, whether certain parts of the National Bank Examiners' reports had been read to the directors, whether various letters written by the Comptroller, or any of the letters written by the Comptroller, had ever been read or seen by the defendants, and whether certain other data concerning the condition of the Bank had been fraudulently concealed from the non-officer directors of the Bank, defendants herein, by the officer directors of said Bank, and evidence was heard upon all of said issues. The Master found such concealment had been made and that the directors were ignorant, without fault upon their part, of many things affecting the Bank, including those above stated.

After the Master's report was filed, exceptions to this were filed by the Receiver of the National Bank of Kentucky and, after a full hearing before the District Court of the United States, for the Western District of Kentucky, where said action was pending, the District Court found as follows:

"The Special Master found that all of these loans were secured, when made, by proper and sufficient collateral; that, because the defendant Brown was using Wakefield & Company as a means of obtaining the proceeds of these loans for his own, personal benefit, he fraudulently caused to be concealed, from the non-officer directors, reports of bank examiners, letters from the Comptroller of the Currency, and other information which would have disclosed the character of such loans as loans to Wakefield & Company in excess of the statutory limit; that such directors did not have such information, had no reason to doubt the propriety of such loans, and, in approving them, relied on the officers of the bank to whom they had entrusted the administration of the details of its affairs; that such directors were not guilty of negligence in connection with such loans; and that, although the defendant offi-

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cers were liable for the loss resulting from the making of these loans because they knew that such loans, should be grouped together as Wakefield & Company loans and, when so grouped, were in excess of the said statutory limit, yet the other defendants, being without that knowledge, were not so liable. Except as herein-after pointed out, I am satisfied by the record that the findings of the Master just mentioned are supported by substantial evidence and that the Court would not be warranted in setting such findings aside. The nature and basis of these findings are indicated by the following quotations from the Master's report (pages 84-88), which I adopt:

"Of course, a bank president who has deliberately made up his mind to use the bank's funds in his personal business and speculations must think out a plan or scheme by which he imagines he can safely do this. . . . Brown clearly determined to use Wakefield & Company in his scheme for making personal use of the bank's money. . . . It is perfectly apparent that Brown and Jones, without protest from any member of the loan committee, were designedly omitting to read parts of the reports of the Examiners, concealing letters from the Comptroller, fraudulently evading the demands of that office, and continuously misleading the non-officer directors. The covering up which Brown and Jones were guilty of, and their acts of concealment in the presence, and with the acquiescence, of the other officers while the board of directors was in session, strongly indicates collusion between these parties, the purpose of which was to enable Brown, without the knowledge of the non-officer directors, to successfully extract funds from the bank in the name of Wakefield & Company, or its employees. . . . It is claimed that certain letters addressed by the Comptroller to the directors furnished actual notice to the members of the board of the fact that debts of Latta, Greer, Harris, Schweitzer, and Meagher were to be included with the debts of Wakefield & Company, and that there was consequently an excessive loan to that

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company. I do not think that any of these letters reached the board of directors notwithstanding the recitation in the minutes to that effect. . . . It is satisfactorily established that the minutes, after being read to the board, were fraudulently altered so as to show the presentation and consideration of these letters. The concealment of these letters from the board, and the fact that such questionable, not to say dangerous, means were resorted to to accomplish it, demonstrates the character of the collusion with which the directors were unknowingly surrounded. . . . There was ample motive for withholding the letters from the board of directors. The great weight of the proof is that they were withheld, and the alteration of the minute book, clearly established, is really a potent circumstance to prove that the letters were in fact withheld. The fabrication of evidence to show that they were presented to the board shows they were withheld: It seems to me that there was a concerted plan to do this because Brown and Jones did it successfully in the presence of others who knew and at the same time allowed it to be done without protest. Also this alteration in aid of the concealment of the letters from the board fits in with the claim that Brown did not read to the board any part of the bank examiner's reports reflecting on this indebtedness or in fact criticising any other loan which he desired to conceal. Going back to the reading of the examiner's reports by Brown to the board, it will be remembered that these reports were made in duplicate, one copy being furnished to the bank and the other to the Comptroller. Difficulty was encountered after the bank closed in finding or getting together the bank's copies. Some of them were found in Mr. Jones' safe, as were also the letters above referred to. Some of the reports had been taken apart and sheets removed. The defendants, after a time, secured certified copies of all reports from the Comptroller's office. Comparing these with the bank's copies of reports, it was found, and is established in the record, that the missing sheets in the bank's copies re-

Motion of Defendants Pursuant to Equity Rule No. 29

lated to loans which had been severely criticised by the examiner.' "

Defendant says that a Motion for Rehearing was filed to this finding by the Receiver of the National Bank of Kentucky, which was overruled and judgment entered thereon in accordance with these findings of fact and said findings of fact and said judgment have never been reversed or set aside and are still in full force and effect.

Defendant pleads and relies upon the findings of fact and the judgment hereinabove referred to as a bar to a retrial of the same issues in this cause.

Defendant also pleads the above facts set out in this paragraph, not only for himself, but for all others similarly situated and those in privity with them.

WHEREFORE, the defendants pray that their plea of res judicata and estoppel be sustained; and that the Bill of Complaint be dismissed, for their costs herein expended and for all proper relief.

**MOTION OF DEFENDANTS PURSUANT TO EQUITY
RULE No. 29**

(Filed December 7, 1937)

"Pursuant to Equity Rule 29, defendants move the court

"(1) to hear and dispose of the Motion heretofore made by certain defendants to dismiss the Bill of Complaint, because same is insufficient in law and does not constitute a valid cause of action against the defendants;

"(2) to hear and dispose of, before the trial of the case, the legal validity of Paragraph II of the Answer of David J. Abbott;

"(3) to hear and dispose of, before the trial of the case, the legal validity of Paragraph III of the Answer of David J. Abbott; and

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"(4) to hear and dispose of, before the trial of the case, the legal validity of Paragraph IV of the Answer of G. A. Heuser, as Executor of the estate of Henry Vogt, deceased.

"Defendants also move the court to strike from the Reply of A. M. Anderson, Receiver,

"(1) Paragraph numbered I, because same is not sufficient in law to support a claim against the defendant, David J. Abbott, or constitute an avoidance of Paragraph II of the Answer of said David J. Abbott;

"(2) Paragraph numbered III, because same is not sufficient in law to support a claim against the defendant, David J. Abbott, or constitute an avoidance of Paragraph III of the Answer of said David J. Abbott."

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(Filed May 13, 1938.)

SWINFORD, Judge.

This case is before the court on motions that present the following questions for determination: The sufficiency of the bill of complaint; the legality of the defenses presented in paragraphs one and two of the answer.

On April 22, 1927, the stockholders of the National Bank of Kentucky and the Louisville Trust Company entered into an agreement whereby a majority of the capital stock of each company was transferred to six trustees. In lieu of the bank stock the beneficial owners of the stock were issued trustees' participation certificates, of the par value of \$100 each. Later each share of the trust estate was divided into 10 shares of a par value of \$10 each. There was issued and outstanding at the time the National Bank of Kentucky closed 570,550 such shares which represented 39,820 shares of the capital stock of the National Bank of Kentucky and 17,235 shares of the capital stock of the Louisville Trust Company.

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In 1929 a third corporation known as BancoKentucky was organized under the laws of the state of Delaware. It had an authorized capital stock of 2,000,000 shares, of the par value of \$10 each. The trustees' participation certificates held by the original stockholders of the National Bank of Kentucky and the Louisville Trust Company were exchanged for shares of the stock of BancoKentucky at the rate of two for one.

This exchange culminated in the owners of the trustees' participation certificates holding 1,080,768 shares of the capital stock of BancoKentucky. Of the remaining shares of stock 394,786 shares were sold and \$9,869,650 paid into the treasury of BancoKentucky.

It is alleged that BancoKentucky was organized at the instance of the officers and directors of the National Bank of Kentucky and the officers and directors of the Louisville Trust Company and the trustees under the trust agreement of April 22, 1927, and proposed by them to the holders of the trustees' participation shares in the National Bank of Kentucky and the Louisville Trust Company; that the holders of the trustees' participation shares represented approximately 95 per cent of the stock of the National Bank of Kentucky and the Louisville Trust Company and that these trustees caused Banco Kentucky to be organized as their agency and instrumentality.

A receiver was appointed for BancoKentucky in November, 1930. The National Bank of Kentucky was closed by a resolution of its board of directors on November 16, 1930, and on the following day the Comptroller of the Currency appointed a receiver for the National Bank of Kentucky. This receiver, Paul C. Keyes, was later succeeded by the present receiver, A. M. Anderson.

On February 20, 1931, the Comptroller of the Currency levied an assessment upon the stockholders of the National Bank of Kentucky payable not later than April 1, 1931.

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On October 31, 1931, the receiver of the National Bank of Kentucky filed an action to recover the amount of the assessment against the receiver of BancoKentucky, and obtained a judgment for the amount of the assessment, to wit, \$3,772,162.40. The judgment was entered on September 14, 1932. On appeal to the Circuit Court of Appeals the judgment of the lower court was affirmed. *Laurent v. Anderson*, 6 Cir., 70 F. (2d) 819.

Under the judgment the receiver of BancoKentucky paid to the receiver of the National Bank of Kentucky the sum of \$90,745.17 to be credited on the judgment. Thereafter, on February 17, 1936, the receiver for the National Bank of Kentucky brought this suit in equity against the stockholders of BancoKentucky, alleging individual liability to pay the assessment against shareholders of the National Bank of Kentucky in the proportion that the respective shares of the BancoKentucky company bear to the total number of shares of BancoKentucky issued and outstanding at the date the National Bank of Kentucky closed.

The receiver here seeks to recover the sum of \$3,771,464.22, subject to the credit of \$90,745.17, paid on December 18, 1934, by the receiver of BancoKentucky.

The defenses to this bill of complaint raised by the motion to dismiss are as follows: (1) That it does not state a cause of action; (2) that it is barred by the statute of limitations; (3) that there is a misjoinder of parties defendant; (4) that by a judgment in the case of *Laurent v. Anderson supra*, there is *res judicata*, by reason of the fact that in that case BancoKentucky was adjudged to be the actual owner of the shares of stock involved; (5) that by a proceeding against BancoKentucky and alleging and establishing that BancoKentucky was the actual owner of the capital stock of the National Bank of Kentucky, by a judgment in the case of *Laurent v. Anderson, supra*, the receiver made an election of persons and an election of remedies and is bound thereby.

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[1] This opinion will be confined strictly to a consideration of these points on the assumption that the facts well pleaded are true.

The sufficiency of the bill of complaint under the first heading is determined by a consideration of the subsequent four questions. It is my opinion that the bill states a cause of action and the motion to dismiss should be overruled.

[2] The statute of limitations is not a defense. The Kentucky Statute, § 2515, provides certain character of actions that must be brought within five years. This suit is based on the assessment and not on any agreement that was made whether fraudulent or not fraudulent. It is true the bill alleges fraud in the creation of the corporation Banco-Kentucky, but it does not seek to nullify that action or to hold all transactions of that corporation void for fraud. It says that the creation of a holding company as an instrumentality for the shareholders does not preclude a recovery of the assessment, under the provisions of the federal statute, 12 U. S. C. A. § 63, providing double liability, from the actual owners of the bank stock.

To apply the theory of the defendants would be to hold the transfer of stock to the alleged holding company fraudulent and void.

It is alleged that Banco was formed for one purpose and that was to shield stockholders in the National Bank of Kentucky from double liability. There is no definite reason why Banco failed. Possibly from general economic conditions. If we assume that these economic conditions had not become acute for six years after the incorporation of Banco, then according to counsel for defendants the receiver could have proceeded against no one for the assessment.

[3, 4] An action against shareholders for an assessment does not accrue until the assessment is due and payable. The assessment was levied on February 20, 1931, and payable on April 1, 1931. This proceeding was instituted on

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February 19, 1936. It was April 1, 1931, that the right of action accrued. *Strasburger v. Schram*, App. D. C., 93 F. (2d) 246; *Barbour v. Thomas*, 6 Cir., 86 F. (2d) 510; *McDonald v. Thompson*, 184 U. S. 71, 22 S. Ct. 297, 46 L. Ed. 437.

In a brief addressed to the defense of misjoinder of parties, counsel have argued that there is an entirely adequate remedy at law and a court of equity has no jurisdiction; that the defendants will be embarrassed in presenting their respective defenses by the great number of defendants and variety of defenses.

[5, 6] The cases referred to by counsel will establish the rule that the true test is whether defendant will be prejudiced by the alleged multifariousness of the bill. *Slater v. Ruggles*, 1920, 49 App. D. C. 277, 263 F. 1021. The very nature of this proceeding, however, warrants the court in overruling the motion to dismiss on this ground. There can be no real prejudice to any defendant by proceeding in equity. The interest of the parties under the allegations of the bill are necessarily common in most respects. To dismiss the bill and require the receiver to sue each separate defendant at law would be to destroy the very essence of equity and be a gross injustice to all parties. It would involve years of litigation and expense over the determination of questions which must of necessity apply to each individual defendant.

While many authorities have been called to the court's attention supporting the position of counsel for defendants on this point, each case must manifestly stand on its own merit and precedent can be of little value.

In the case of *Hale v. Allinson*, 188 U. S. 56, 23 S. Ct. 244, 47 L. Ed. 380, it is stated (page 253): "the defendants have no common interest in these questions, or in the relief sought by the receiver against each defendant." This is certainly not true of the case at bar, as the defendants are

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all in one class in so far as many of the principal defenses are concerned: Sufficiency of the bill of complaint, election of parties and remedies, and limitation.

The mere computation of liability is not necessarily complicated but this is a minor detail in the joining of the whole number of defendants in one bill in equity. Equity Rule 23, 28 U. S. C. A. following section 723, will adequately protect the individual defendants in the presentation of their several defenses. The Court of Appeals for the Sixth Circuit in the case of *Ullrich v. Thomas*, 86 F. (2d) 678, 679, said: "The contention that equity was without jurisdiction because appellee had an adequate remedy at law is unavailing, first, because appellee was enjoined from enforcing the assessments at law; second, because an accounting was required to determine the interests of appellants in the bank as represented by their holding certificates; and, third, because the cross-bill was permissible under Equity Rule 23."

In the recently decided case of *A. M. Anderson, etc. v. Elizabeth Atkinson et al.*, D. C., 22 F. Supp. 853, in the Northern District of Illinois, wherein there were joined one hundred defendants, and in which the same questions here presented were involved, it was held there was a community of interest between the defendants on all material questions of law and fact and that equity could more efficiently, promptly, inexpensively, and practically attain the ends of justice.

In a case presenting a similar question the Court of Appeals for the Sixth Circuit said: "And these circumstances, namely, the great number of the parties on one side or the other, the identity of the question of law, and the similarity of the facts in the several controversies between the respective parties, are the basis on which the jurisdiction rests. The object is to minimize litigation, not only in the interest of the public, but also for the convenience and advantage

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of the parties. If the receiver was compelled to bring separate suits, it would entail a vast expense upon the fund in trying over and over again the identical questions of law and fact with each stockholder, and with no substantial advantage to him, but injury, rather, in the increased cost in the immediate suit; and the larger burden upon the fund, created by the many suits against the others." *Bailey et al. v. Tillinghast*, 99 F. 801, 806.

In the opinion in the case of *Hale v. Allinson*, *supra*, the court well stated the real test of equity jurisdiction: "Each case, if not brought directly within the principle of some preceding case, must, as we think, be decided upon its own merits and upon a survey of the real and substantial convenience of all parties, the adequacy of the legal remedy, the situations of the different parties, the points to be contested and the result which would follow if jurisdiction should be assumed or denied; these various matters being factors to be taken into consideration upon the question of equitable jurisdiction on this ground, and whether within reasonable and fair grounds the suit is calculated to be in truth one which will practically prevent a multiplicity of litigation, and will be an actual convenience to all parties, and will not unreasonably overlook or obstruct the material interests of any."

The defense of *res judicata* is here so closely related to the defense of election of remedies that it hardly admits of separate discussion.

[7] It is sometimes very difficult to decide what is *res judicata* and what is not. Usually the matter is determined by the simple test prescribed by the rule laid down in 15 R. C. L. § 429: "The judgment of a court of concurrent jurisdiction directly upon the point, is as a plea, a bar, or as evidence, conclusive, between the same parties, upon the same matter, directly in question in another court."

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[8] In the case of *Laurent v. Anderson*, *supra*, the same matters were not directly in question. The plea is that Banco was set up as an instrumentality or agency of the stockholders of the National Bank of Kentucky. We have for determination a question that has not been finally determined in any other proceeding. The cases of *Hawkins v. Glenn*, 131 U. S. 319, 9 S. Ct. 739, 33 L. Ed. 184, and *Supreme Council of the Royal Arcanum v. Green*, 237 U. S. 531, 35 S. Ct. 724, 59 L. Ed. 1089, L. R. A. 1916A, 771, relied upon by counsel for defendants, are authority for the proposition that a corporate liability is a stockholder's liability, but what the court is called upon to determine here is whether or not the corporation was set up as an instrumentality or agency for an express purpose.

[9, 10] The scope of estoppel by judgment is set out in the case of *Tait, Collector of Internal Revenue, v. Western Maryland Railway Co.*, 289 U. S. 620, 53 S. Ct. 706, 707, 77 L. Ed. 1405: "The scope of the estoppel of a judgment depends upon whether the question arises in a subsequent action between the same parties upon the same claim or demand or upon a different claim or demand. In the former case a judgment upon the merits is an absolute bar to the subsequent action. In the latter the inquiry is whether the point or question to be determined in the later action is the same as that litigated and determined in the original action, *Cromwell v. County of Sac*, 94 U. S. 351, 352, 353, 24 L. Ed. 195; *Southern Pacific R. Co. v. United States*, 168 U. S. 1, 48, 18 S. Ct. 18, 42 L. Ed. 355; *United States v. Moser*, 266 U. S. 236, 241, 45 S. Ct. 66, 69 L. Ed. 262."

[11] The Supreme Court in the case of *Lyon v. Perin & G. Mfg. Co.*, 125 U. S. 698, 8 S. Ct. 1024, 31 L. Ed. 839, lays down the following rule (page 1025): "It is well settled that, in order to render a matter *res adjudicata*, there must be a concurrence of the four conditions, viz: (1) Identity in the thing sued for; (2) identity of the cause of action;

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(3) identity of persons and parties to the action; and (4) identity of the quality in the persons for or against whom the claim is made."

The sole question presented in *Laurent v. Anderson*, supra, was whether Banco was the actual owner of the shares involved.

A reading of the bill shows that the exact question presented here is not that alone, but, further, that Banco was created as an agency and instrumentality to hold the shares of stock for the express purpose of avoiding the double liability provisions of the statute.

I am of the opinion that *res judicata* is not a good defense.

[12] To sustain the defense that the receiver is bound by his election of remedies and persons on the record as it now stands is to hold that the purpose of the statute fixing double liability may be nullified by the concurrence of two things: The organization of a holding company to whom the bank stock is transferred for the purpose of defeating double liability and the bad judgment of a receiver who proceeds against an insolvent holding company rather than against solvent individuals. To so hold would be to substitute the plain and unequivocal language of a good law for the frailties of human judgment.

Why quibble over the question of who is the beneficial owner, Banco Kentucky or the individuals who own the stock of Banco Kentucky, where it is admitted that Banco Kentucky was a mere instrumentality to perpetrate a fraud upon the depositors and creditors of the National Bank of Kentucky.

The defendants contend that there can be but one beneficial and true owner of the bank stock; that Banco has been adjudged the owner and consequently no other person can be the owner.

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[13] This is pure legal fiction. Banco was the record holder and technical beneficiary of the proceeds from the stock. But, according to the allegations in the bill, was merely the tainted channel through which the benefits went to the actual beneficiaries. The Supreme Court in the case of *Christopher v. Norvell*, 201 U. S. 216, 26 S. Ct. 502, 506, 50 L. Ed. 732, 5 Ann. Cas. 740, said: "The statute, in effect, says to all who become owners of national bank stock, no matter in what way they become shareholders, that they cannot enjoy the benefits accruing to shareholders, and escape liability for the contracts, debts, and engagements of the bank."

This prevailing interpretation of the application of the double liability statute has been announced repeatedly. See *Ohio Valley National Bank v. Hulitt, Receiver*, 204 U. S. 162, 27 S. Ct. 179, 51 L. Ed. 423; *Corker v. Soper*, 5 Cir., 53 F. (2d) 190; *Metropolitan Holding Company v. Snyder*, 8 Cir., 79 F. (2d) 263, 103 A. L. R. 912.

[14] The case of *Davis v. Wakelee*, 156 U. S. 680, 15 S. Ct. 555, 39 L. Ed. 578, cited by counsel for defendants with reference to election of persons states the following rule (page 558): "It may be laid down as a general proposition that, where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him."

There can be no controversy as to the reason or justice of this well-established rule. There is no confusion of the rule with equitable estoppel.

Here, however, we are confronted with an entirely different case. The receiver is not compelled to make a choice but has the right to pursue either or both ways of collecting the assessment. In the case of *Continental National Bank*

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& Trust Company v. O'Neill, 7 Cir., 82 F. (2d) 650, the court said (page 652): "If it be assumed that both the settlor and the trust estate be liable for the assessment, a suit against one alone would not effect a release of the other obligor, and for an additional reason where it appears that one obligor is a non-resident. Bigelow v. Old Dominion Copper Mining & Smelting Co., 225 U. S. 111, at page 127, 32 S. Ct. 641, 56 L. Ed. 1009, Ann. Cas. 1913E, 875. See, also, Kline v. Burke Construction Co., 260 U. S. 226, 43 S. Ct. 79, 67 L. Ed. 226, 24 A. L. R. 1077."

[15] If section 5151 of the Revised Statutes, 12 U. S. C. A. § 63, is to have any force whatsoever, it is to assure those who do business with a national bank that the beneficial owner of the stock of the bank shall be assessable to double the amount of the stock subscribed. The question of whether or not Banco Kentucky was a separate entity is not presented for determination. From the allegations in the bill of complaint it was organized for the sole purpose of owning bank stock, and especially the bank stock involved here, to carry on an alleged unlawful enterprise. This is not the simple proposition of determining whether or not a corporation may own bank stock. The allegations in the bill of complaint are: "Pursuant to the above described plan, the holders of the Trustees Participation shares representing 95% of the stock of the National Bank of Kentucky and the Louisville Trust Company, caused said holding corporation to be organized as their instrumentality, for their own use and enrichment and in furtherance of a scheme to engage in unlawful acts and to enable them through said corporate agency and instrumentality unlawfully to acquire, own, hold control and operate a group of state and national banks and trust companies contrary to and in defiance of the meaning, spirit and intent of the laws of the United States and the Commonwealth of Ken-

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tucky and other states relating to the ownership, operation and supervision of banks and trust companies."

[16] Counsel in their brief for defendants Tashgian et al. state that there were persons who bought stock in BancoKentucky who knew little or nothing of the National Bank of Kentucky. Regardless of their knowledge, they must of necessity be the part owners of the bank stock and consequently beneficial and true owners and charged with the liability under the allegations of the bill of complaint.

[17] Counsel seek to distinguish the case at bar from *Barbour v. Thomas*, 6 Cir., 86 F. (2d) 510. I cannot agree that simply by contracting for the statutory liability and so advertising there was anything added to the force of the statute. Neither do I agree that the statement in that opinion (page 517) that "none of its stock was sold to the public nor issued to any persons other than the stockholders of the banks or their assignees," destroys it as an authority here.

[18] Counsel for defendants make the distinction that in the case at bar that many of the stockholders of Banco have never owned any of the stock of the National Bank of Kentucky and could not possibly have been a party to an attempt to avoid double liability as owners of bank stock.

BancoKentucky was a holding company for bank stock, and was the record owner of 95 per cent. of the shares of the National Bank of Kentucky, all of the stockholders of Banco profited from the dividends produced by the stock of the National Bank of Kentucky, and they should be charged with knowledge of the assets of a corporation (Banco) in whose stock they invested and from which assets they derived benefits.

The motion to dismiss the petition is overruled and orders may be drawn accordingly.

*Order Overruling Motions to Dismiss***ORDER OVERRULING MOTIONS TO DISMISS**

(Entered July 12, 1938)

This cause came on to be heard at this term on the Bill of Complaint, as amended and supplemented, and on MOTIONS TO DISMISS, MOTIONS TO TRANSFER THIS CAUSE TO THE LAW SIDE OF THE COURT, MOTIONS FOR AN ORDER OF SEVERANCE, requiring plaintiff to proceed separately against defendants, and on the MOTIONS UNDER EQUITY RULE 29 requesting the Court to Hear and Dispose of DEFENSES set forth in PARAGRAPHS II AND III of the answers of Katherine Kirkpatrick Abbott, Admx. of the ESTATE OF DAVID J. ABBOTT, DEC'D., and FIDELITY & COLUMBIA TRUST COMPANY, EXECUTOR OF THE ESTATE OF MARY E. REED, DEC'D. and PARAGRAPHS II, III and IV OF THE ANSWER OF G. A. HEUSER, EXECUTOR OF THE ESTATE OF HENRY VOGT, DEC'D., and on the MOTIONS TO MAKE PLAINTIFF'S BILL OF COMPLAINT, as amended and supplemented, DEFINITE AND CERTAIN, the arguments of counsel and briefs.

Upon consideration of the Motions to Dismiss, asserting the following defenses:

- (1) that the Bill of Complaint, as amended and supplemented, does not state a cause of action in equity;
- (2) that plaintiff's claim is barred by the statute of limitations;
- (3) that there is a misjoinder of parties defendant;
- (4) that the judgment of this court in the case of *Laurent v. Anderson* (reported on appeal, 70 Fed. [2d] 819) is res judicata of the defendants' liability as shareholders of the National Bank of Kentucky;
- (5) that the prosecution of said action (*Laurent v. Anderson*) to judgment by plaintiff constituted a binding election of persons and remedies;

Order Overruling Motions to Dismiss

the Court finds that none of said motions are well taken and all of said motions are hereby overruled, to which ruling defendants filing said motions except.

On consideration of defendants' motions to hear and dispose of the legal validity of Paragraphs II and III of the answers of Katherine Kirkpatrick Abbott, Admx. of the estate of David J. Abbott, dec'd., Paragraphs II and III of the answers of Fidelity & Columbia Trust Company, Ex. of the Estate of Mary E. Reed, dec'd., and Paragraphs II, III and IV of the answer of G. A. Heuser, Ex. of the estate of Henry Vogt, dec'd., the Court finds that the allegations of said paragraphs are insufficient in law to constitute any defense to plaintiff's Bill of Complaint, as amended and supplemented, and it is ordered, adjudged and decreed that said paragraphs be and they hereby are stricken from said answers, to which said defendants except.

On consideration of the Motions to Make Definite and Certain, to Transfer This Cause to the Law Side of the Court, and for Orders of Severance, requiring plaintiff to proceed separately against defendants, the Court finds that none of said motions are well taken. It is Ordered, Adjudged and Decreed that all of said motions be and the same are hereby overruled, to which defendants filing said motions except.

It is further ordered that all defendants whose motions are hereby overruled and who have not heretofore answered, fully answer plaintiff's Bill of Complaint, as amended and supplemented, within sixty (60) days from the entry of this order.

It is further ordered that any defendant may, in answering said Bill of Complaint, adopt and incorporate by reference any defense set forth in any answer filed herein, provided that so much of this order as rules upon the suffi-

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ciency of such defenses shall apply to such adopting answers with like exceptions to such adopting defendants.

Attached hereto and made a part hereof is a list of defendants whose motions are hereby overruled with respect to the above issues of law.

(List referred to omitted from transcript.)

SEPARATE ANSWER, COUNTERCLAIM AND CROSS ACTION OF HENRY M. JOHNSON, SUSIE E. TELLMAN, FRIEDA GUDEX, ADMINISTRATOR OF ESTATE OF EMILY E. BISCHOFF, AND MARY CHRISTINE COTTELL WATKINS, DE BONIS NON WITH THE WILL ANNEXED OF THE ESTATE OF P. A. GAERTNER, DECEASED.

(Filed September 8, 1938)

Come the defendants, Henry M. Johnson, Susie E. Tellman, Frieda Gudex, Administrator of Estate of Emily E. Bischoff, and Mary Christine Cottell Watkins, De Bonis Non with the will annexed of the estate of P. A. Gaertner, deceased, and for answer to so much of the Bill of Complaint herein as they are advised is necessary for them to answer and for counterclaim and cross claim herein, say,

I.

That the amount of stock they owned in Banco Kentucky Company at the time of the closing of the National Bank of Kentucky is correctly stated in the Bill of Complaint herein; that they acquired their stock solely by original subscription and payment for the said shares of the Banco Kentucky Company and that none of their stock represents any transfer of trustees participation certificates for stock in Banco Kentucky Company, nor any transfer of stock of National Bank of Kentucky for stock of Banco Kentucky Company.

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II.

Defendants admit the allegations in Paragraphs I, II, III, IV, VII, VIII, IX, X, AND XXI of the Bill of Complaint.

Defendants admit the allegations of Paragraph V of the Bill of Complaint, except that they deny that the claims asserted against them and sued on herein are a just demand against them, and they deny that there is no offset or discount against said claims.

Defendants say that with respect to the following fifteen paragraphs of Plaintiff's Bill of Complaint, to-wit:—VI, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXII, XXIII, XXIV, and XXV, that they do not know whether they are true or false, but that one or the other is a fact, viz, that they are either true or they are false, and these defendants therefore plead in the alternative with respect to them as follows:

III.

Either these defendants deny that they are without knowledge or information sufficient to form a belief as to the truth of the averments in said fifteen paragraphs of plaintiff's Complaint, set out in paragraph II herein, or

IV.

These defendants say that the said averments of the said above referred to fifteen paragraphs of plaintiff's Bill of Complaint are true.

V.

Defendants say that if said averments in said last mentioned fifteen paragraphs of plaintiff's Bill of Complaint are not true, then these defendants adopt paragraph II of the answer of Thomas Trammel, et al., filed herein, except

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in the manner which Thomas Trammel, et al., acquired their stock, as paragraph V of this answer, the same as if copied at length herein, and rely upon the defense set out in paragraph II of said Thomas Trammel, et al., answer as a full defense of the cause of action sued on herein.

VI.

These defendants say that if said averments in the said fifteen paragraphs of plaintiff's Bill of Complaint are not true, then these defendants adopt paragraph III of the answer of Thomas Trammel, et al., filed herein, except in the manner which Thomas Trammel, et al., acquired their stock, as paragraph VI of this answer, the same as if copied at length herein, and rely upon the defense set out in paragraph III of said Thomas Trammel, et al., answer as a full defense of a cause of action sued on herein.

VII.

Come defendants and for answer to the Bill of Complaint filed herein, say that the cause of action set out in the Bill of Complaint is barred by Section 2515 of the Kentucky Statutes, which requires that an action upon a liability created by a statute, when no other time is fixed by the statute creating the liability, and an action for relief on the ground of fraud shall be commenced within five years next after the cause of action accrued, and that the cause of action attempted to be asserted by plaintiff against these defendants herein accrued more than five years next before the bringing of this action and defendants plead and rely upon such statute in bar of plaintiff's action.

VIII.

These defendants say that defendant's equitable cause of action is as plaintiff alleges in paragraph IV and in the

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prayer of his Bill of Complaint, "a case for winding up the affairs of a National Banking Association"; that said National Banking Association is the Bank of Kentucky; and (quoting from plaintiff's petition) "to determine the proportionate part of the aggregate liability claimed against the defendants named herein for which each individual is severally liable," and to determine certain *credits* defendants might be entitled to, and to obtain "the equitable determination in one action of the questions of common interests" and to "avoid a multiplicity of suits and circuitry of actions and the unreasonable expense of thousands of separate suits, which would dissipate the trust fund herein sought to be recovered," and to prevent "inseparable damage and injury"; that the Judicial Code of the United States expressly gives jurisdiction to this District Court to "wind up the affairs" of the National Bank of Kentucky; that in this equitable action, to so wind up the affairs of said Bank, this Court, in administering equity, has full and plenary power to, and justice and equity require that it shall, hear, determine and decide all questions, matters and rights affecting all persons involved in such winding up the affairs of said Bank and shall bring same to a final, speedy and inexpensive conclusion; that the claims of plaintiff arise out of a transaction or occurrence, to-wit:—the organizing, incorporating and launching of the Banco-Kentucky Company, which constitutes the subject matter of plaintiff's claim; that any defendants having a defense, by way of counterclaim against plaintiff or a cross claim against co-defendants, are required to plead same in this action under the law and rules of Civil Procedure applying to the District Courts of the United States; that said law is well expressed in Rule XIII of the New Rules of Civil Procedure for District Courts of the United States in Sections A, B, C, and G, as follows:

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"(a) COMPULSORY COUNTERCLAIMS. A pleading shall state as a counterclaim any claim, not the subject of a pending action, which at the time of filing the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

(b) PERMISSIVE COUNTERCLAIMS. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) COUNTERCLAIM EXCEEDING OPPOSING CLAIM. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) CROSS-CLAIM AGAINST CO-PARTY. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that in the subject matter either of the original action or of a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant."

That defendants' counterclaim and cross claim asserted herein arise out of the said same transaction or occurrence which is the subject matter of plaintiff's claim.

IX.

That said allegations in above referred fifteen paragraphs of plaintiff's Complaint, to-wit:—Paragraphs VI, XI, XII,

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XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXII, XXIII, XXIV, and XXV, are true and that the said officers, directors and stockholders of the National Bank of Kentucky, and the National Bank of Kentucky itself, were guilty of fraud, deceit and misrepresentation in organizing, forming, incorporating and launching a Corporation, *BancoKentucky Company*, for the illegal and unlawful purpose of acquiring, holding, owning, controlling and operating a group of State and National Banks and Trust Companies contrary to and in defiance of the meaning, spirit and intent of the laws of the United States and of the Commonwealth of Kentucky and of other States relating to the ownership, operation and supervision of Banks and Trust Companies and unlawfully to use the assets of said Banks and Trust Companies in speculative transactions prohibited by law and unlawfully to use the assets and property of one or more of said Banks in making loans on the security of the holding company stock, namely the *BancoKentucky Company* in violation of law, and in further placing in the Articles of Incorporation of the said *BancoKentucky Company* the false and fraudulent statement that

“The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.”

and in the certificate of Stock, the false and fraudulent statement that said stock was

“full paid and non-assessable”

and in selling said stock and delivering said Certificates of same in the *BancoKentucky Company* to these innocent defendants upon the false and fraudulent representation, statement and implication that said Corporation was lawfully and legally authorized for lawful and legal purpose,

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and was conducting a legal and lawful business, and the false and fraudulent statements and representations contained in said Certificates of Stock that the private property of the stockholders were not subject to the payment of the corporate debts to any extent whatever, and that said stock was full paid and non-assessable, all of which statements, and representations and implications were false and were known by the said Bank of Kentucky and its officers, directors and stockholders to be false, or should have been known by them to have been false; that defendants did not know of the falsity of the above representations, statements and implications and believed same were true; that believing same were true, defendants relied on same and in reliance on same, purchased stock in said Banco-Kentucky Company and suffered loss in the total purchase price they paid for said stock, and the interest thereon from the date of said payments, and defendants are further threatened herein with an additional loss of an assessment against said stock; that said loss was occasioned by illegal formation and operation of Banco-Kentucky Company, that the said losses occasioned to these defendants and threatened to them are \$25.00 per share for stock set out in plaintiff's Bill of Complaint as owned by these defendants, the amount these defendants paid in value for said stock, and any additional amount, if any, these defendants may be held herein to pay on plaintiff's claim asserted herein.

Defendants say that they were innocent purchasers for value of stock in the Banco-Kentucky Company; that they paid value for same; that they did not trade or exchange any National Bank of Kentucky stock for same; that the Banco-Kentucky Company was conceived, planned, incorporated and launched by the Bank of Kentucky and by the holders of 95% of the stock in the National Bank of Kentucky, and its officers and directors; that these innocent de-

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defendants, with respect to the wrongs perpetrated by the National Bank of Kentucky and its stockholders and officers and directors in selling them stock in the said illegal Banco-Kentucky Company were as innocent as any other creditor of said National Bank of Kentucky; that by reason of said wrong-doing, defendants suffered loss and thereby came possessed of a just and legal claim against National Bank of Kentucky and against its said officers and directors and stockholders, who perpetrated said wrong, and that these defendants thereby became creditors of National Bank of Kentucky, its stockholders, officers and directors; that these defendants as such innocent creditors and claimants have and possess claims of equal dignity and priority as any other creditor of the National Bank of Kentucky.

Defendants say that, on account of the above facts, defendants have rescinded their said purchases of said stock in the said Banco-Kentucky Company, and call and demand upon the plaintiff, receiver of National Bank of Kentucky, and upon all these defendants' co-defendants hereto to pay to these defendants the amounts they paid for said Banco-Kentucky stock, and interest thereon from date of payment, and for any additional amounts the Court herein may adjudge herein against them and which amount they may be compelled to pay.

Defendants say that they did not learn of the said fraud, misrepresentation and deceit practiced on them by National Bank of Kentucky and by the said 95% of the stockholders of the National Bank of Kentucky, and by the said officers and directors of the National Bank of Kentucky until this Bill of Complaint was filed, and that these defendants under the circumstances existing were not guilty of any laches or negligence in promptly and seasonably asserting their right and determination and action in rescinding the purchase of said stock and claiming recovery of their said payments

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and losses; that any delay in these defendants such rescinding and claiming payments has not injured or been prejudicial to the interests of any of the parties to this action or involved therein.

These defendants file herewith the said Certificates of Stock in the Banco Kentucky Company and tender same to plaintiff and cross defendants as a surrender to the latter of the stock bought by these defendants under the circumstances and conditions and upon the false representations above set out.

These defendants say that the stockholders of Banco Kentucky Company may be classified as follows:

1. Guilty organizers.
2. Innocent non-organizers and purchasers of Banco Kentucky stock.

that the creditors of Banco-Kentucky may be classified as follows:

1. Guilty organizers and creditors.
2. Innocent creditors.

Defendants make this pleading a counterclaim against plaintiff and a cross claim against all these defendants' co-defendants herein to the end that plaintiff may effect no recovery against these defendants and that these defendants may recover a judgment against such of defendants as are guilty organizers of the Banco Kentucky Company.

X.

These defendants say that the laws of the United States provide that each National Banking Association shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the Association, and the numbers of shares held by each, in the office where its business is transacted; that such list shall be subject to the inspection of all the shareholders and creditors of the

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Association. See U. S. C. A. Title 12—Banks and Banking, Section 62; that the purpose of said Statute has specifically held by the United States Courts, including the Supreme Court of the United States, is as follows: to give creditors of the Association "information as to the shareholders upon whom, if the Association becomes insolvent, will rest the individual liability for its contracts, debts and engagements" (*Pauly v. State Loan, etc., Co.*, 165 U.S. 606, 17 S. Ct. 465, 41 L. Ed. 844), that the said records and books of the National Bank of Kentucky showed nowhere these defendants as stockholders of the National Bank of Kentucky, and that at no time were any creditors of the National Bank of Kentucky, for whose benefit plaintiff, Receiver, brings this action, deceived or misled into believing that these defendants were stockholders of the National Bank of Kentucky, or that any creditors were prejudiced or injured by acting upon such belief.

XI.

Defendants pray that Court

1. Appoint a Master under proper Order of Reference to take proof and hear testimony and have an accounting as to
 - A. All creditors of the National Bank of Kentucky and classification of same as to
 - a. who are "guilty organizers" of BancoKentucky Company.
 - b. who are "innocent non-organizers" of BancoKentucky Company:
 - as referred to in this pleading,
 - B. All stockholders of BancoKentucky Company and classification of same as to
 - a. who are "guilty organizers" of BancoKentucky Company,
 - b. who are "innocent non-organizers and purchasers" of BancoKentucky Company Stock,
 - as referred to in this pleading.

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- C. The amount of damages and losses the innocent stockholders of the BancoKentucky Company shall recover against the guilty organizers of BancoKentucky Company.
2. Give judgment that no recovery be had by plaintiff against those who are innocent non-organizers and purchasers of stock in BancoKentucky Company.
 3. Give judgment in favor of the innocent non-organizers and purchasers of stock in BancoKentucky Company against the guilty organizers of BancoKentucky Company who are parties to this action, either as plaintiff or as defendants.
 4. Give proper and appropriate judgments and orders in all other matters between plaintiff and defendants so as to effect and work out equity and justice between the parties, and for all other proper and equitable relief to which these defendants may be entitled.

AMENDED ANSWER, COUNTERCLAIM AND CROSS PETITION OF SUSIE E. TELLMAN, FRIEDA GUDEX, EXECUTRIX OF ESTATE OF EMILY E. BISCHOFF, AND MARY CHRISTINE COTTELL WATKINS, DE BONIS NON WITH THE WILL ANNEXED OF THE ESTATE OF P. A. GAERTNER, AND MOTION FOR SUMMARY JUDGMENT.

(Filed November 1, 1938)

Come defendants and treating the procedure now in process in this action in the nature of a Pre-Trial Procedure, as provided for in Rule 16 of the Federal Rules of Civil Procedure, and treating the pending statement made by plaintiff's counsel and taken down by the official reporter of this Court, as part of the record herein, as in the nature of a "Bill of Particulars" or "A More Definite Statement" of "Matter which is not averred with sufficient definiteness and particularity" in plaintiff's Bill of Complaint, and calls attention of the Court to the statements of said plain-

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tiff's counsel in stating the case to the Court substantially as follows:

1. That plaintiff's contention was that BancoKentucky Company's status was a false and fraudulent agency and instrumentality of the National Bank of Kentucky in all the acts undertaken, committed and perpetrated by the said BancoKentucky Company.

Plaintiff's counsel quoting freely from Judge Sullivan in another jurisdiction so holding BancoKentucky as such agency and instrumentality and plaintiff in this action adopting same as plaintiff's allegation and contention.

2. That the only stock of the National Bank of Kentucky held by BancoKentucky Company was the stock which stockholders of the National Bank of Kentucky exchanged for stock in the BancoKentucky Company.

3. That BancoKentucky Company never invested in stock of the National Bank of Kentucky a single dollar of the BancoKentucky Company's money obtained from any source, including money paid into BancoKentucky Company by the purchasers of BancoKentucky Company stock.

4. That the BancoKentucky Company never came to be an operating company at all.

5. That BancoKentucky Company never qualified to do business in Kentucky or elsewhere.

Defendants say that if Nos. 1, 2, 3, 4, and 5 are correct and that the BancoKentucky Company was merely a fraudulent agency and instrumentality of the National Bank of Kentucky, then the National Bank of Kentucky received all the money paid by the purchasers of stock in the BancoKentucky Company and paid for same for the use and benefit of the said purchasers of said stock and that the National Bank of Kentucky promised to pay said purchasers of said stock the amount they paid for same, together with interest thereon from the date of payment until

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paid, and that the said stockholders and purchasers of said stock thereby have a just and equitable claim against the National Bank of Kentucky and its assets in the hands of plaintiff receiver herein, which claim, held by said parties is of equal dignity and priority as any depositor of money in the National Bank of Kentucky; that the laws of the United States applicable to national banks, providing that the double liability of shareholders is for "all contracts, debts and engagements" of national banks. See Sec. 64 of U. S. C. A. to any "creditor" of such Bank Sec. 65 U. S. C. A. and all claims "adjudicated in a court of competent jurisdiction" Sec. 194 U. S. C. A.

Defendants say that none of the money so promised was ever paid by the the National Bank of Kentucky or the plaintiff receiver herein and that said moneys, together with interest thereon, constitutes a just claim against the said assets; there is no usury thereon or offset thereto.

Defendants further say that there are a great number of purchasers of stock of the BancoKentucky Company, who paid for same in cash or its equivalent, who are similarly situated as these defendants.

WHEREFORE: THESE DEFENDANTS move, the Court at this time for a summary judgment in their favor and in favor of those similarly situated against plaintiff receiver of the National Bank of Kentucky herein, adjudging that defendants who paid for their stock in cash or equivalent in the BancoKentucky Company and did not exchange same for any stock in the National Bank of Kentucky, have a just and lawful claim against the plaintiff receiver herein, and the assets of the National Bank of Kentucky in his hands for the amount they so paid for their said stock and interest thereon from the date of payment until paid; that defendants and those similarly situ-

Plaintiff's Reply to Counter-claim

ated with them as purchasers and buyers of stock of the Banco Kentucky Company have judgment against plaintiff herein for their costs herein expended and for all further, proper and equitable relief to which they may appear entitled.

**PLAINTIFF'S REPLY TO COUNTER-CLAIM OF
HENRY M. JOHNSON, SUSIE TELLMAN, FRIEDA
GUDEX, ADMX, ESTATE OF EMILY E. BISCHOFF,
AND MARY CHRISTINE COTTELL WATKINS,
D. B. N. WITH THE WILL ANNEXED OF THE ES-
TATE OF P. A. GAERTNER, DECEASED**

(Filed November 15, 1939)

Plaintiff, A. M. Anderson, Receiver of the National Bank of Kentucky, for reply to the counter-claim and cross action of the above named defendants, says:

1. That said counter-claim and cross action fails to allege a right or a claim against plaintiff upon which relief can be granted.

2. Plaintiff denies the allegations of Paragraph III of said pleading.

3. Plaintiff denies the allegations set forth in Paragraph VIII of said pleading that this court has jurisdiction to hear, determine or decide all questions, matters and rights of persons interested in the winding up of the affairs of the National Bank of Kentucky, and denies that this court has a right to assume jurisdiction over the winding up of the affairs of said bank except with respect to suits by or against plaintiff as receiver of said bank and counter-claims or cross claims maintainable therein under the Rules of Civil Procedure; and denies that defendants' "counter-claim and cross claim" arises out of the transaction or occurrence, the subject of plaintiff's claim.

Plaintiff's Reply to Counter-claim

4. Plaintiff denies the allegations of Paragraph IX of said pleading, that defendants are innocent purchasers of stock of Banco Kentucky Company or that defendants were induced to purchase said stock by any false or fraudulent representation with respect thereto; that defendants suffered any loss or are possessed of any claim against the National Bank of Kentucky or that defendants are creditors of the National Bank of Kentucky in any amount; that defendants have rescinded their purchase of stock in Banco Kentucky Company or have made demand upon plaintiff or anyone to pay defendants the amounts invested by them in Banco Kentucky Company; and that defendants were not fully informed of the actions of officers, directors and stockholders of the National Bank of Kentucky, in connection with Banco Kentucky Company until this action was commenced. Further replying to said paragraph, plaintiff says that defendants may not avoid liability to assessment, as stockholders of the National Bank of Kentucky by asserting the right to rescind their subscription or purchase of their share interest in said bank, for any wrong alleged to have been perpetrated upon them by said bank or its officers or directors.

5. Plaintiff denies the allegations set forth in Paragraph X of said pleading.

WHEREFORE, having fully replied, plaintiff prays that said counter-claim and cross action of the above named defendants be dismissed and that judgment be entered against them as prayed for in plaintiff's bill of complaint as amended.

*Order***ORDER MAKING OBJECTIONS AND EXCEPTIONS
OF ONE DEFENDANT AVAILABLE TO ALL**

(Entered October 31, 1938)

Upon motion of counsel for defendants, it is ordered, adjudged and decreed as follows:

1. Objections made and exceptions taken before, during or at the conclusion of the trial, shall inure to the benefit of all defendants as to whom they shall be applicable or relevant.

2. The response of the members of the Defense Counsel Committee to Plaintiff's Request for Admissions, served on plaintiff October 27, 1938, shall be considered as the response of all defendants, except those who have heretofore otherwise responded.

3. Defendants' request upon plaintiff for admissions served on plaintiff October 22, 1938 shall be considered the request of all defendants and plaintiff's response thereto filed and served October 21, 1938 shall inure to the benefit of all defendants.

4. All pleadings and motions heretofore filed by any defendant, which relate to the merits of the case in general and not to some special fact or decision applicable to the particular defendant filing such pleadings, shall inure to the benefit of all defendants.

5. All defenses which may be designated as special defenses, in that they are not defenses common to the majority of the defendants, shall be taken up for consideration for a hearing on the merits of so much of the case as is common to a majority of the defendants.

MAC SWINFORD,

Judge

*Order***ORDER AS TO TESTIMONY OF CERTAIN
DEFENDANTS**

(Entered February 3, 1939)

On the Court's own motion, it is considered, ordered, adjudged and found that each of the defendants herein, save and except those who were officers, directors or employees of the National Bank of Kentucky and Louisville Trust Company, or officers or directors of Banco Kentucky Company, if called as a witness in his own behalf, would testify, over plaintiff's objections, that each of them acquired their respective shares of stock in Banco Kentucky Company, believing, as distinguished from whatever constructive knowledge may be imputed to them as a matter of law, that the Louisville Trust Company and the National Bank of Kentucky were both solvent and sound financial institutions, and that they did not even remotely suspect that either of said banking institutions were in a questionable financial condition, if such they were, and that they acquired their stock in Banco Kentucky Company in the belief that they were making a sound financial investment in a separate corporation, and that the BancoKentucky Company was to do the things authorized by its corporate charter, as indicated in the letter of July 19, 1929.

All defendants who acquired stock in the BancoKentucky Company in exchange for Trustees' Participation Certificates executed a writing in the form of plaintiff's Exhibit 24-4 (top) and all defendants who subscribed for stock in the BancoKentucky Company executed a writing in the form of plaintiff's Exhibit 24-4 (Bottom). Should any defendant who acquired stock in BancoKentucky Company by exchange of Trustee's Participation Certificates, or by subscription for stock to BancoKentucky Company, desire

Statement as to Special Defenses

so to do, he may, by testimony introduced on his behalf, establish the fact or attempt to establish the fact, that such defendant or defendants did not execute a writing in the form of plaintiff's Exhibit 24-4 (Top), or plaintiff's Exhibit 24-4 (Bottom).

It is further considered, ordered and adjudged that this order may be read in evidence by the defendants herein as the testimony of the aforesaid defendants.

STATEMENT AS TO SPECIAL DEFENSES

Certain of defendants filed pleadings setting up special defenses. Since the Court dismissed the case on the ground that none of defendants were liable he did not pass on these special defenses or make any findings of fact or conclusions of law on the special situations which these defenses presented. It is recognized by all parties that, in the event of reversal of the ruling of the lower court, this cause will be remanded for the purpose of a further consideration by the District Court of these special defenses, the pleadings and the stipulations of fact regarding these special defenses are omitted from this record.

The appellees covered by this statement include the Fidelity & Columbia Trust Company, as agent for various individuals, Jennie K. Selligman, and Jennie K. Selligman, Executrix of Alfred Selligman, deceased, Louisville Trust Company, Executor of the estate of John B. Pirtle, John C. Thompson, Administrator of the estate of Nannie C. Thompson, Kentucky Title Trust Company, assignee of George M. Clark, W. J. Pierce, The Fidelity & Columbia Trust Company, Henning Chambers & Company, The Fidelity & Columbia Trust Company, Trustee for Eugene A. Taylor, The Fidelity & Columbia Trust Company for Francis T. Cole, The Fidelity & Columbia Trust Company,

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Administrator with the will annexed of Emily Thomas, The Fidelity & Columbia Trust Company, guardian of Clara Frances and Katherine Allen, The Fidelity & Columbia Trust Company, Executor of the estate of George J. Long, The Fidelity & Columbia Trust Company, Trustee under the will of Clara K. Bullitt and Anna Bullitt Brewer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW REQUESTED BY PLAINTIFF

FINDINGS OF FACT

(Filed with the Court January 5, 1940)

1. The National Bank of Kentucky is a national banking association organized under the laws of the United States, domiciled in Louisville, Kentucky.¹ On November 16, 1930 it had issued and outstanding 40,000 shares of capital stock of the par value of \$100.00 each.²

2. On Sunday, November 16, 1930 the National Bank of Kentucky closed pursuant to a resolution duly adopted by its board of directors.³

3. This is a civil action involving the winding up of the affairs of the National Bank of Kentucky. The Court has jurisdiction thereof in equity because of the community of interest between defendants on the material questions of law and fact, complicated interests are involved, an accounting is necessary, to avoid a multiplicity of suits and for the convenience of all parties. Plaintiff has no adequate remedy at law.

4. The citizenship and residence of the defendants is correctly set forth in the Bill of Complaint and amendments thereto.⁴

¹ Stip. Par. 1, Vol. II, p. 74.

² Stip. Par. 6, Vol. II, p. 76.

³ Stip. Par. 2, Vol. II, p. 75.

⁴ Stip. Par. 4, Vol. II, p. 75.

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5. On November 17, 1930 the Comptroller of the Currency, having found the National Bank of Kentucky insolvent and unable to pay its debts, appointed Paul C. Keyes Receiver therefor. Said Receiver qualified, entered upon and continued the performance of his duties until succeeded on December 15, 1932 by A. M. Anderson as Receiver of the National Bank of Kentucky, who ever since has been and now is the duly appointed, qualified and acting Receiver.⁵

6. On November 17, 1930 ten shares of the capital stock of the National Bank of Kentucky were registered in the names of each of the eighteen Bank Directors and all the remaining shares of its issued and outstanding stock (39,820) were registered in the names of Vogt, Minary, Duncan, Dodd, Bohmer and Metcalfe, as Trustees under a Trust Agreement dated April 22, 1927.⁶ On said date Banco Kentucky Company, a Delaware corporation, was the registered owner of 94.73% of the Trustees' Participation Certificates, issued by the Trustees under said Trust Agreement, which certificates represented 37,721.6214 shares or approximately 95% of the capital stock of the National Bank of Kentucky.⁷ Each \$10.00 par value Trustees' Participation Certificate represented .0697923 of a share of the capital stock of the National Bank of Kentucky of the par value of \$100.00 per share.⁸

7. On February 20, 1931 the Comptroller of the Currency of the United States made an assessment and requisition upon the shareholders of the National Bank of Kentucky for \$4,000,000.00, the par value of its authorized, issued and outstanding 40,000 shares of capital stock, payable on or before April 1, 1931. On March 20, 1931 the Receiver

⁵ Stip. Par. 3, Vol. II, p. 75.

⁶ Ex. 7, Trs. Agree.; Stip. Par. 6, Vol. II, p. 76.

⁷ Stip. Par. 92, Vol. II, p. 94.

⁸ Stip. Par. 12, Vol. II, p. 79.

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served the following notice,* to which was attached a copy of Comptroller's order of assessment,¹⁰ on all holders of shares of BancoKentucky Company;

"As a stockholder in The BancoKentucky Company, you will please take notice, that the Comptroller of the Currency has on February 20, 1931, levied an assessment upon the stockholders of The National Bank of Kentucky, Louisville, Ky., on the par value of each and every share, payable at the Office of the Receiver, on or before April 1, 1931. A notice of such assessment and a demand for payment of the same has been served upon the Receiver of The BancoKentucky Company as the holder of 540,484 trustees' participation certificates, issued under a certain trust agreement of April 22, 1927, which trustees' participation certificates represent the ownership of 37,721.624 shares of stock in The National Bank of Kentucky. You will, therefore, take notice that it is the intention of the undersigned, as Receiver of The National Bank of Kentucky, to proceed against you for the collection of the aforesaid assessment liability represented by the said trustees' participation certificates held by said BancoKentucky Company, to the extent that the undersigned, as Receiver of The National Bank of Kentucky, is unable to collect said assessment from The BancoKentucky Company or its Receiver.

PAUL C. KEYES

RECEIVER OF THE NATIONAL
BANK OF KENTUCKY

Louisville, Kentucky

Registered Letter
Return Receipt Requested"¹¹.

8. Thereafter the Receiver of National Bank of Kentucky secured leave of the Jefferson County, Kentucky Circuit

* Ex. 6. Notice of assessment to Banco shareholders.

¹⁰ Ex. 5. Comptroller's order of assessment on N. B. K. shareholders.

¹¹ Stip. Par. 5, Vol. II, p. 76.

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Court, which had appointed a Receiver for Banco Kentucky Company, to sue the Receiver of Banco Kentucky Company in this Court. Plaintiff's predecessor began an action in this Court and, on September 14, 1932, recovered a judgment in the principal sum of \$3,772,162.40 and for interest in the sum of \$331,320.97 from the date the assessment was payable to the date of the judgment. This judgment is final and, except for a dividend thereon in the sum of \$90,745.17, paid by the Receiver of the Banco Kentucky Company on December 18, 1934, is unsatisfied.¹²

9. The Trust Agreement of April 22, 1927 was the outgrowth of a plan formulated by officers, directors and shareholders of the National Bank of Kentucky, and the Louisville Trust Company, a trust company organized under the laws of Kentucky also domiciled in Louisville, to expand the business of the two institutions and to make the investments of the shareholders therein more profitable by converting the share interests in each into certificates representing an indivisible voting share interest in both, and by operating the Bank and the Trust Company under a common board of directors,¹³ for the benefit of identical shareholders.¹⁴

10. Ultimately all the certificates for shares, issued by the National Bank of Kentucky and the Louisville Trust Company, (except five shares of the latter) were deposited with the Trustees under said agreement.¹⁵ Said Trustees issued one \$100.00 par Trustees' Participation Certificate to the Bank and Trust Company shareholders for each share of Bank and Trust Company stock deposited with them. The Trustees were directors of the Bank and Trust

¹² Stip. Par. 112, Vol. II, p. 100.

¹³ Exs. 11-3 and 11-5, Huston Quin's correspondence with Dpty. Compt.; Ex. 7, Trs. Agree.; Ex. 11-6, Dir. Min. 4/22/27; Ex. 161, Helm's letter to Ky. Atty. Gen. 8/29/29.

¹⁴ Dodd, Vol. II, p. 242.

¹⁵ Ex. 8 pp. 140-41, Trustees' Min.; Dodd Vol. II, p. 242.

Findings of Fact and Conclusions of Law

Company and were under the immediate control of an "Advisory Committee," consisting exclusively of the directors of the Bank and Trust Company, under the terms of the Trust Agreement.¹⁶ The Trustees caused ten shares of the Bank's stock and ten shares of the Trust Company's stock to be registered in the names of each director of the Bank and Trust Company to qualify them as directors. The Trustees at all times retained the certificates for such shares in their possession and control¹⁷ and secured agreements from each director under the terms of which each director waived the dividends and all rights of ownership with respect to such shares and agreed to accept in lieu thereof Trustees' Participation Certificates of the equivalent par value.¹⁸

11. The only property ever in the possession of the Trustees were certificates for shares issued by the National Bank of Kentucky and the Louisville Trust Company. The Trust Agreement of April 22, 1927 provided that the Trustees should hold only such shares and shares of other banks and trust companies which might later be acquired by the Trustees, with the consent of said Advisory Committee, and secured through the issuance of additional Trustees' Participation Certificates.¹⁹

12. In order to assure depositors and creditors of banks and trust companies, the shares of which were or might be registered in the names of the Trustees, that the security and protection intended for their benefit under federal and state laws imposing personal liability to assessment on shareholders of national and state banks and trust companies would be continued, the officers, directors, attorneys

¹⁶ Ex. 7, Trs. Agreee.

¹⁷ Dodd Vol. II, p. 219; Helm Vol. III, p. 105.

¹⁸ Ex. 8 pp. 40-43 Trustees Min.; Ex. 204 Dir. Speed's record of bank shares; Helm Vol. III, pp. 105, 106, 107.

¹⁹ Ex. 7 pp. 17, 18, 19 Trust Agreement.

Findings of Fact and Conclusions of Law

and shareholders of the National Bank of Kentucky and The Louisville Trust Company provided for and secured the following express written agreement of every Trustees' Participation Certificate holder that would be answerable for any assessment levied against shareholders of any bank or trust company, the shares of which might be registered in the names of the Trustees;

"Each owner of a Trustees' Participation Certificate issued hereunder shall be subject to the same liability thereon as he would have been subject to in case he had been the owner of record of such proportionate part of the shares held by the Trustees in any corporation as the number of shares called for by his Trustees' Participation Certificate bears to the whole number of shares covered by all outstanding Trustees' Participation Certificates; and to such extent he shall indemnify and hold harmless the Trustees owning such stock from any loss or liability on account of being the holders or owners thereof. The measure of liability assumed hereunder shall be the same as that provided by law with reference to the holders of stock in any particular corporation in which the Trustees may hold stock as is provided by law with reference to the holders of such stock, and no more." ²⁰

Each Trustees' Participation Certificate certified that the holder was the owner of a certain number of "shares of the par value of \$100" (later \$10) "each of the indivisible trust estate consisting of shares of the capital stock of The National Bank of Kentucky, of Louisville, and The Louisville Trust Company, also of Louisville, Kentucky, and of any other corporation acquired by the Trustees under the agreement between stockholders of said institutions and said Trustees, which agreement is dated April 22, 1927, and is on file with said institutions. This certifi-

²⁰ Ex. 7 p. 29 Trs. Agree.

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cate is issued under the terms of the aforesaid agreement, and the holder hereof, by accepting same, consents to and adopts said terms as if fully written here."²¹ The shareholders designated the Louisville Trust Company as Transfer Agent for T.P.C.s and the National Bank of Kentucky Registrar thereof. The Trust Agreement provided that the trustees and the transfer agent should certify to the Bank and Trust Company a copy of the trustees' register of Trustees' Participation Certificate-Holders from time to time.²²

13. So far as the rights and obligations of the shareholders of the unified Bank-Trust Company were concerned, the unification was in fact a merger or a consolidation.²³ All directors of the Bank were elected to the Trust Company board and all directors of the Trust Company were elected to the Bank board, and the two institutions were thereafter managed under a common board of directors until January, 1930. The shareholders of each became the common shareholders of the unified Bank-Trust Company²⁴ and continued to receive the same amounts in dividends²⁵ and to exercise the same rights and privileges and continued subject to assessment liability in the same amount and of the same character after the exchange of Bank and Trust Company stock for Trustees' Participation Certificates as before.²⁶

14. The National Bank of Kentucky's expansion program was continued by the absorption, in May 1929, of the Louisville National Bank and Trust Company, a national bank-

²¹ Ex. 10, §10 par T. P. C.

²² Ex. 7, p. 27 Trs. Agree.

²³ Dodd Vol. II, pp. 217, 270; Hieatt Vol. III, pp. 193, 202; Ex. 122 p. 1886 Ans. of Louis. Tr. Co. and its Rec'r. to petition of Annie Bullitt Brewer; Ex. 123 p. 1901 Ans. of Louis. Tr. Co. to petition of Trustee of Menne Est.; Ex. 26-3 Bank's notice of consolidation with Tr. Co. published in Coast Banker June, 1929.

²⁴ Dodd Vol. II, p. 242.

²⁵ Ex. 123 p. 1908 Louis. Tr. Co. Ans. to Menne claim; Ex. 7 p. 20; Ex.

8 p. 38.

²⁶ Ex. 7 pp. 29-30.

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ing association domiciled in Louisville, Kentucky, and its subsidiary, the Louisville National Company, a Kentucky corporation, following negotiations begun early in 1929, by officers of the National Bank of Kentucky.²⁷ Said Louisville National Company was created by the officers, directors and shareholders of Louisville National Bank and Trust Company (many of whom participated in the Banco-Kentucky Plan) in November, 1927, as part of a "plan of reorganization," to take over that bank's bond department, to conduct a mortgage finance business and such other business as its directors, who were bank directors, might determine from time to time.²⁸ The capital of the Louisville National Bank and Trust Company was \$750,000.00, represented by 7500 shares of the par value of \$100.00 each, which shares also represented the actual ownership of the shares of the Louisville National Company.²⁹ The board of directors of the Bank-Trust Company, acting as the Advisory Committee and through the Trustees, increased the capital of the Louisville Trust Company from \$1,000,000.00 to \$1,750,000.00, secured for it the right to engage in the banking business, transferred the newly authorized 7500 shares to the Trustees who issued 7500 additional Trustees' Participation Certificates to the holders of the unified stock of the Louisville National Bank and Trust Company and the Louisville National Company in exchange for all said unified stock of the Louisville National Bank and Trust Company.³⁰

²⁷ Boomer Vol. III, p. 244; Vaughan Vol. III, p. 1; Ex. 8 p. 71; Helm Vol. III, p. 50.

²⁸ Ex. 8 p. 130. Copy of agreement between Louis. Nat'l. Bk. & Tr. Co., Trustees, Wm. W. Crawford and other shareholders and Louis. Nat'l. Co. for the organization and operation of Louis. Nat'l. Co. under a "plan of reorganization" adopted by Louis. Nat'l. Bk. & Tr. Co. shareholders.

²⁹ Ex. 208, share of Louis. Nat'l. Bk. & Tr. Co. stock representing proportionate beneficial interest in shares of Louis. Nat'l. Co. Ex. 8, p. 125. amendment to agreement of Nov. 1927 unifying shares of Louis. Nat'l. Co. with shares of Louis. Tr. Co., dated February, 1930.

³⁰ Ex. 26-11, Herald Post Jan. 17, 1929 announces merger of Louis. Nat'l. Bk. & Tr. Co. with Louis. Tr. Co. "Under Joint Ownership of National Bank of Kentucky"—"Greatest Financial Combine In City's History Is Formed"; Ex. 8 pp. 72-3, 79-80, Helm Vol. III, p. 50, Ex. 8 pp. 125-129.

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15. In June, 1929 each outstanding \$100.00 par Trustees' Participation Certificate was divided into ten Trustees' Participation Certificates having a par value of \$10.00 each.³¹ The Trustees issued the new \$10.00 par Trustees' Participation Certificates to the holders of the unified shares of the Bank-Trust Company in the same form as the \$100.00 par Trustees' Participation Certificates and the holders of the \$10.00 par Trustees' Participation Certificates, by the acceptance thereof, reiterated their agreement to be subject to the liability of a record owner of the shares of the Bank and Trust Company stock standing in the names of the Trustees, in proportion to the outstanding Trustees' Participation Certificates, as previously set forth under finding 12.

16. After the time of the National Bank of Kentucky's unification with the Trust Company, during the months preceding the organization of Banco Kentucky Company and while it was being considered by officers, directors and shareholders of the Bank, and until the Bank's failure, November 16, 1930, the financial condition of the Bank became progressively worse. The Comptroller's and National Bank Examiner's criticisms of the management of the bank and the unsatisfactory and dangerous trend in its affairs became increasingly severe. The Comptroller and the Bank Examiner were insistent on action being taken to reduce overdrafts and statutory bad debts and to eliminate millions of dollars of substandard assets.³²

17. From the time of the unification of the Bank with the Trust Company until the organization of Banco Kentucky Company, July 16, 1929, the bank's deposits had diminished 38%,³³ while total bank deposits in Louisville

³¹ Stip. Par. 11, Vol. II, p. 78.

³² Natl. Bk. Exrs.' reports, Ex. 14, 16-20, correspondence between Comptroller and Bk. officers and directors Ex. 33-1 to 33-25, Exs. 34-1 to 34-14.

³³ Ex. 12, Bank's statement of assets and liabilities, Feb. 11, 1925 to Nov. 17, 1930; Ex. 17, Exr.'s rep. of examination of bank as of May 25, 1929.

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were increasing," and its borrowings had increased from two hundred thousand to over fifteen millions.³⁵ From February 1, 1929 to May 31, 1929 the bank's average daily borrowings had increased from about three and three-quarters millions to twelve and one-half millions of dollars.³⁶ The Bank was deficient in its legal reserves on 72 days from January 4, 1929 to July 15, 1929, in amounts up to nearly two millions.³⁷ The Governor of the Federal Reserve Bank for the Sixth District conferred with officers of the Bank in February, 1929 and again in August, 1929 regarding the Bank's continuous borrowings, and suggested liquidation, but the Bank's borrowings instead increased while the amount of its assets acceptable to the Federal Reserve Bank for rediscount steadily decreased.³⁸

18. Prior to the organization of Banco Kentucky Company and as part of the Plan for the Reorganization of the business of the Bank³⁹ and for the purpose of escaping federal regulation and supervision, the officers and directors of the Bank decided to denationalize the Bank⁴⁰ by surrendering its national charter and transferring all its assets to a new Kentucky corporation organized under Kentucky banking laws⁴¹ and to withdraw from membership in the Federal Reserve System.⁴²

³⁴ Helm Vol. III, p. 112.

³⁵ Ex. 12; Ex. 17.

³⁶ Ex. 117, Accountant's rep. on Bank's Bills Payable, Rediscounts, etc., 1/1/29 - 11/16/30.

³⁷ Ex. 118, Accountant's rep. on Bank's deficiency in legal reserves and borrowings from 1/1/29 to 7/15/29.

³⁸ Ex. 59, Letter from Governor of St. Louis Fed. Res. Bk. to Brown, 11/18/29, regarding Bank's continuous and increased borrowings and requesting Brown's appearance in St. Louis.

³⁹ Vaughan Vol. III, p. 8.

⁴⁰ Ex. 158-16, Vaughan's letter to Ky. Banking Com'r. 1/25/30 re denationalization.

⁴¹ Ex. 26, p. 1187 Bk. publicly announces it had changed from a national to a state bank—"The Bank of Kentucky"; Ex. 21, p. 1002 Bk. Dir. minutes of 9/27/29, Directors authorized Brown to denationalize Bk. and ratify million-dollar loan secured by Ormsby from Guaranty Trs. Co. of N. Y. 9/21/29.

⁴² Dodd Vol. II, p. 260.

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19. The officers and directors of the Bank, acting as the "Advisory Committee" to the Trustees," caused the incorporation of "Bank of Kentucky" under Kentucky banking laws" and executed an agreement and conveyance transferring all the assets of the National Bank of Kentucky to a new state bank in consideration of the latter's assumption of the national bank's liabilities." Because of the distressed financial condition of the National Bank of Kentucky, the necessity for its retaining a source of funds through uninterrupted rediscounting privileges with the Federal Reserve Bank," the inability of the officers and directors to secure a waiver of examination of the new Bank of Kentucky by Federal Reserve Examiners" after the transfer of assets and the inability of the management of the bank to eliminate over \$4,000,000 of sub-standard assets and to reduce a large concentration of loans on the security of Banco Kentucky Company stock," it became necessary to abandon the plan to denationalize the Bank and to withdraw from membership in the Federal Reserve System."

⁴³ Ex. 8, p. 104.

⁴⁴ Ex. 158-1 Bk. of Ky. Art. recorded; Ex. 48 Brown applies to Comptr. to liquidate nat'l. bk.; Ex. 50 Vaughan writes Jones 10/10/29 submitting papers for Dirs. and Trustees to execute to incorporate new Bk. of Ky. and transfer nat'l. bk. assets to new state bank.

⁴⁵ Ex. 21, p. 1003-4 Bk. Dirs. minutes 10/11/29 setting forth executed contract conveying bk. assets to new Bk. of Ky.

⁴⁶ Vaughan Vol. III, p. 21; Ex. 54 Fed. Res. Agent's letter 10/22/29 to Bk. advising that examination of assets to be deferred until new state bank had taken over to give management time to correct criticisms contained in examiner's report of May 25, '29, and elimination of \$4,023,171.41 in sub-standard assets; Ex. 158-17 Vaughan's letter to Comptr. 3/25/30 advising of abandonment of plan to denationalize.

⁴⁷ Ex. 159, p. 2048 Vaughan's memo to Bk. of services in connection with denationalization and efforts to secure waiver of examination of new state bank by Fed. Res.

⁴⁸ Ex. 54 Fed. Res. Agent's letter to Bk. 10/22/29; Ex. 158-7 Vaughan acknowledges receipt of copy of Ex. 54; Ex. 158-8 Vaughan writes Bk. 11/6/29 that Fed. Res. would insist upon examination of new bank, and necessity for uninterrupted rediscounting privileges with Fed. Res. Bk. and that nat'l. bk. apply for membership on behalf of new bank or abandon scheme of denationalization.

⁴⁹ Ex. 21, p. 1024 Bk. Dirs. min. 3/21/30; Ex. 47 p. 1464 minutes of bk. "stockholders" meeting 3/21/30 abandoning denationalization; Ex. 8 p. 136 min. of Trustees 3/21/30 that stockholders desire abandonment of denationalization plan.

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20. During the examination of the Bank by national bank examiners, begun May 25, 1929 and completed June 15, 1929, its officers prevailed upon the Chief National Bank Examiner in charge of the examination to waive recommended charge-offs of losses upon the representations that they would soon form a holding company to hold the stock of the Bank-Trust Company and to take over and work out certain of the Bank's sub-standard assets which were most severely criticized by the Comptroller and examiners.⁵⁰ The management also proposed to consolidate the denationalized Bank of Kentucky with the Louisville Trust Company.⁵¹ Such a consolidation would have permitted a reduction of capital, releasing four or five millions of dollars to eliminate sub-standard assets.⁵²

21. Officers of the Bank were fully informed of the condition of its affairs. Reports of the semi-annual examinations by National Bank Examiners, submitted to the Bank's directors,⁵³ pointed out the unsatisfactory state of its affairs and the sub-standard assets which were sources of potential danger to it. The Bank's officers knew, and its directors knew, or in the exercise of ordinary care should have known, of the possibility of an assessment against holders of Trustees' Participation Certificates in the event of the inability of the bank to continue as a national banking institution and/or in the event of loss to its depositors due to its closing.

22. From time to time, after the unification of the Bank and Trust Company, further expansion⁵⁴ of the Bank's business was discussed and considered by officers and di-

⁵⁰ Ex. 17, p. 612 examiner's comment, in report of examination begun May 25, 1929 of officers' promise to form holding co.

⁵¹ Ex. 33-14, p. 1292 Comptr. letter to directors 6/29; Ex. 33-16 p. 1294 Comptr. letter to directors 8/29/29; Ex. 33-17, p. 1295 Comptr. letter to directors 9/17/29; Ex. 34-11, p. 1334 Bk. Cashier's letter to Comptr. 9/24/29.

⁵² Ex. 21, p. 1043 Dirs. Minutes 10/24/30; Neill 359-60.

⁵³ Helm Vol. III, pp. 75; 76; Dodd Vol. II, p. 253.

⁵⁴ Ex. 122, p. 1886 Louia. Tr. Ans. in Bullit matter; Ex. 161, p. 2057 Helm's letter to Ky. Atty. Gen. 8/29/29.

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rectors. From January 1929 to July 12, 1929 the entire management of the Bank and its affiliated trust company considered and discussed a plan finally known as the "Plan for the Reorganization of the National Bank of Kentucky and Louisville Trust Company."⁵⁵ These officers, directors and attorneys were holders of the Trustees' Participation Certificates, were aware of their personal liability to assessment thereon,⁵⁶ and the officers and the directors and attorneys knew, or in the exercise of ordinary care should have known, the condition of the Bank. They were desirous to not only strengthen the Bank⁵⁷ but to expand its business and the sources of profit to shareholders⁵⁸ by means of chain or group banking operations⁵⁹ and claim they expected to engage in activities beyond the charter powers of the national or Kentucky banks and trust companies,⁶⁰ following the example of other large banks engaged in similar ventures.⁶¹

23. The Bank's officers, and some of its directors and lawyers knew of various methods under discussion in the American Bankers' Association Journal and by bankers generally for the establishing of chains or groups of banks by means of trust agreements similar to the Trust Agreement of April 22, 1927 and by means of bank stock holding companies.⁶² They knew that under such trust agreements,

⁵⁵ Dodd, Vol. II, p. 228, 267; Carroll, Vol. III, p. 138; Helm, Vol. III, pp. 51, 52, 55, 56, 60; Vaughan, Vol. III, p. 18.

⁵⁶ Helm, Vol. III, pp. 70, 71; Boomer, Vol. III, p. 233; H. Taylor, Vol. III, p. 255.

⁵⁷ Ex. 17, p. 612 Exr's. Report May '29; Helm, Vol. III, pp. 82, 83; H. Taylor, Vol. III, p. 254; Vaughan, Vol. III, p. 8.

⁵⁸ Girdler, Vol. III, pp. 219, 220; E. Taylor, Vol. III, p. 260.

⁵⁹ Dodd, Vol. II, pp. 227, 228, 260; Speed, Vol. III, pp. 178, 192; Helm, Vol. III, pp. 53, 82, 83; Vaughan, Vol. III, p. 8; Carroll, Vol. III, pp. 152, 153, 154, 155, 156; Hieatt, Vol. III, pp. 203, 204; Boomer, Vol. III, p. 245, 229; Ex. 32-2 Helm's letter, to Bk. Re Amendment of Ky. Stat. limiting ownership of Bk. and Tr. Co. stock; Speed, Vol. III, p. 188.

⁶⁰ Dodd, Vol. II, p. 227, 260, 261; H. Taylor, Vol. III, p. 248, 254; Carroll, Vol. III, p. 138, 155, 156; Helm, Vol. III, p. 53, 83, 84, 85; E. Taylor, Vol. III, p. 263.

⁶¹ E. Taylor, Vol. III, p. 262; Cammack, Vol. III, p. 134; Helm, Vol. III, p. 83; Boomer, Vol. III, p. 245, 246; Hieatt, Vol. III, p. 203; H. Taylor, Vol. III, p. 251; Ex. 24-3, the Plan.

⁶² Ex. 32-2; H. Taylor, Vol. III, p. 251; Hieatt, Vol. III, p. 203-4; Boomer, Vol. III, p. 245, 229.

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it was the common practice for shareholders to retain their bank stock or to exchange it for participating certificates or receipts representing deposited bank stock and bearing the same liability.⁶³ They knew that the protection provided depositors by double liability statutes would be lost to depositors in banks whose shares were held by a bank stock holding company unless shareholders of the holding company either provided it with ample independent assets other than bank stocks from which any assessments on such bank stock could be satisfied, or the holding company shareholders were individually liable to assessment on the bank shares held for their benefit by the holding company.⁶⁴

24. After careful consideration by all the Bank's officers, directors and many of its largest shareholders, with the advice and assistance of lawyers experienced in banking and with the laws relative thereto⁶⁵ extending over a period of many months, a Plan was agreed upon for the creation of a holding company under the general corporation laws of Delaware, to be named BancoKentucky Company, after the National Bank of Kentucky, which was commonly known as "Bank of Kentucky,"⁶⁶ and to be controlled by the stockholders of the unified Bank-Trust Company and managed and operated by its officers and directors.⁶⁷ BancoKentucky Company was first to acquire and hold a substantial majority, if not all, the capital stock of the Bank and the Trust Company, evidenced by Trustees' Participation Certificates, through the mere exchange of holding company stock for Trustees' Participation Certifi-

⁶³ Helm, Vol. III, p. 44, 45, 70; Ex. 11-6, p. 159, 172-3-4 Bk. Dirs. Min. 4/22/27 proxy, power of atty.; prospectus to bk. stockholders in deposit form, re exchange of N. B. K. certificates for TPC's.

⁶⁴ Ex. 32-2 Ab. Bkrs. Ass'n. Jou. Dec. '29 p. 616; Oct. '29 p. 307; Apr. '28 p. 761; Oct. '27 p. 255.

⁶⁵ Vaughan, Vol. III, pp. 10, 18; Ex. 161 p. 2057 Helm's letter to Ky. Atty. Gen. 8/29/29; Ex. 8 p. 130; Ex. 164 Helm's letter to Bk. 2/14/30; Helm, Vol. III, p. 68-70.

⁶⁶ Ex. 26 p. 1169, 1170, 1179, newspapers; Vaughan, Vol. III, p. 21; Burkholder, Vol. II, p. 209.

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cates⁶⁸ and then, with the National Bank of Kentucky as the parent bank or main link in the chain,⁶⁹ to engage in chain, group, or quasi-branch banking through the acquisition of controlling stock interests in other banks and trust companies in the Middle West⁷⁰ and the operation of such controlled banks and trust companies for the benefit of the shareholders of Banco Kentucky Company.⁷¹ It was also planned to merge the National Bank of Kentucky and Louisville Trust Company, thereby eliminating the Trustees.⁷²

25. The promoters of the holding company claim that the plan was prompted by their desire to compete with other banks which were extending their businesses into fields beyond the charter powers of banks and avoiding the laws restricting branch banking, through holding companies.⁷³ They claimed that through Banco Kentucky Company and the other banking units in the chain they intended to extend the business of the National Bank of Kentucky⁷⁴ by engaging in profitable but more hazardous business than permitted by the Bank or Trust Company's charter,⁷⁵ to make loans to clients beyond the Bank's legal limits, to apportion business among the controlled banks and trust companies,⁷⁶ to use the holding company as a substitute for the Federal Reserve System for the controlled banks⁷⁷ and

⁶⁸ Speed, Vol. III, p. 188; Helm, Vol. III, p. 82; Ex. 28 Bean's letter to Brown 6/24/29.

⁶⁹ H. Taylor, Vol. III, p. 251; Carroll, Vol. III, p. 155, 156; Dodd, Vol. II, p. 260; Boomer, Vol. III, p. 229, 245.

⁷⁰ Hieatt, Vol. III, p. 203; Vaughan, Vol. III, p. 7; Carroll, Vol. III, p. 152-154.

⁷¹ Ex. 24-3 Plan; E. Taylor, Vol. III, p. 260; Helm, Vol. III, p. 53.

⁷² Ex. 32-2 Helm's Letter to Ky. Atty. Gen.; Ex. Letter of Comptr. to Dirs.; Ex. 33-16 Letter from Comptr. to Dirs. 8/29/29; Ex. 158-16 Helm's Letter to Ky. Bkr. Com'r. 1/25/30.

⁷³ E. Taylor, Vol. III, p. 260, 262, 263; Cammack, Vol. III, p. 134; Helm, Vol. III, p. 83; Boomer, Vol. III, p. 245, 246; Hieatt, Vol. III, p. 203; H. Taylor, Vol. III, p. 251; Sackett Affidavit.

⁷⁴ Cammack, Vol. III, p. 136.

⁷⁵ Helm, Vol. III, p. 83-85; Carroll, Vol. III, p. 155, 156; Dodd, Vol. II, p. 260, 261; H. Taylor, Vol. III, p. 254; Cammack, Vol. III, p. 131.

⁷⁶ Helm, Vol. III, p. 85.

⁷⁷ Helm, Vol. III, p. 53; Dodd, Vol. II, p. 260; Speed, Vol. III, p. 189; Hieatt, Vol. III, p. 204.

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to aid the units of the banking chain with cash when the need arose.⁷⁸ Though it was intended that BancoKentucky Company be free from supervision by public banking officials or regulation by state or federal banking laws,⁷⁹ the organizers of BancoKentucky Company assert it was to reorganize the business of banking and indirectly to engage in the business of banking.⁸⁰

26. The officers, directors, attorneys and stockholders of the bank who organized and promoted BancoKentucky Company, were substantially the same persons⁸¹ who arranged the unification of the Bank with the Trust Company under the Trust Agreement and under forms of certificates whereby all stockholders of the Bank-Trust Company recognized that after exchanging certificates for shares issued by the Bank or the Trust Company for Trustees' Participation Certificates they continued to be the Bank and Trust Company's real shareholders and proportionately liable to assessment as record owners of the Bank and Trust shares registered in the names of the Trustees.⁸² They all knew that persons who should acquire holding company shares either by exchange of Trustees' Participation Certificates or for cash would continue to be or become the ultimate beneficiaries of the dividends and privileges to which shareholders in the Bank-Trust Company would be entitled. They all knew that unless the holding company was provided with ample independent assets, other than assessable bank or trust company shares, in an amount sufficient at all times to enable it to satisfy any assessment on such shares; or the shareholders of the holding company were proportionately and personally liable for any assessment which

⁷⁸ Helm, Vol. III, p. 82, 83, 85; H. Taylor, Vol. III, 254; Vaughan, Vol. III, p. 8.

⁷⁹ Cammack, Vol. III, p. 129.

⁸⁰ H. Taylor, Vol. III, p. 248; E. Taylor, Vol. III, p. 260; Helm, Vol. III, p. 53; Carroll, Vol. III, p. 152, 153, 154.

⁸¹ Ex. 161 p. 2057, Helm's letter to Ky. Atty. Gen. 8/29/29; Cammack 1226.

⁸² Ex. 7 Trust Agreement; Ex. 10 T. P. C.

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might be levied on the shares held by the holding company, the protection, theretofore existing, intended for depositors and creditors of the banks controlled by the holding company under federal and state laws, would be of no practical value to such depositors and creditors.

27. The officers, directors and stockholders of the Bank and Trust Company who organized and promoted Banco-Kentucky Company caused to be inserted in its charter Article VIII—"the private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever"⁸³ and caused the form for subscriptions for holding company stock,⁸⁴ and the holding company's temporary⁸⁵ and permanent stock certificates⁸⁶ to recite that the shares of Banco-Kentucky Company were "fully paid and non-assessable."

28. The organizers and promoters of Banco-Kentucky Company inserted Article VIII in the company's charter and the words "non-assessable" in all subscription and stock forms for the purpose of effecting the termination of the previously existing personal liability to assessment of all holders of Trustees' Participation Certificates who exchanged such Certificates for Banco-Kentucky Company stock,⁸⁷ and the limitation of the personal liability to such assessments, on the part of all persons otherwise acquiring holding company stock, to the value of the property or

⁸³ Ex. 8 p. 94 Trustees' minutes.

⁸⁴ Ex. 24-4 Subscription and exchange form under Plan of Reorganization.

⁸⁵ Ex. 45 Temporary certificate for holding company shares.

⁸⁶ Ex. 46 Permanent holding company certificate.

⁸⁷ Ex. 27 Bean's letter to Brown 7/28/29 noting that one of the advantages in transferring bank stock for Banco was avoidance of double liability; Ex. 37-1 Vice Pres. J. J. Hayes' letter to prospect, 8/15/29 that new stock as safe as old and without double liability; Ex. 37-3 Vice Pres. J. J. Hayes' letter to prospect, 10/2/29, that Banco did not have double liability; Ex. 122 p. 1888 Louis. Tr. Co. Ans. alleging that one of the reasons inducing the exchange of T. P. Co. for Banco was Banco became subject to double liability; Ex. 123 p. 1909 Ans. of Louis. Tr. Co. that retention of bank stock would probably have entailed additional liability.

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money transferred or paid to the holding company therefor.

29. Everything actually done or claimed to have been contemplated to be done by or through BancoKentucky Company could have been accomplished by and on behalf of the holders of the Trustees' Participation Certificates through the Trustees under the terms of the Trust Agreement of April 22, 1927, or through the Louisville National Company except that the shareholders of the Bank-Trust Company would have retained certificates subjecting them proportionately to the liability of a record owner of the Bank and Trust Company's shares registered in the names of the Trustees.

30. Some of the officers, directors and attorneys of the Bank who participated in the organization of Banco-Kentucky Company claim that the corporation was not intended to be merely a bank stock holding company, but that through it they expected to engage in the investment banking business," to originate and sell first mortgage bonds," to underwrite securities," to make loans beyond the legal limitations imposed upon the Bank and Trust Company," and to use that company as a sort of private federal reserve system for the banks controlled by it." Banco-Kentucky Company never undertook any of these activities. The organizers of BancoKentucky Company knew that neither a Kentucky general business corporation, nor a general business corporation organized under the laws of any other state" could lawfully engage in such activities in the State of Kentucky. They knew that the Kentucky statutes authorized the formation of corporations to engage

⁸⁸ Dodd, Vol. II, p. 49, 50.

⁸⁹ Dodd, Vol. II, p. 50, 51.

⁹⁰ Dodd, Vol. II, p. 51.

⁹¹ Cammack, Vol. III, p. 135; E. Taylor, Vol. III, p. 268, 269; H. Taylor, Vol. III, p. 248.

⁹² Speed, Vol. III, p. 189; Carroll, Vol. 156.

⁹³ Ky. Const. 202.

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in any lawful business "but banking . . . ,"⁹⁴ that general business corporations could not "directly or indirectly, engage in or carry on in any way the business of banking, of any kind, unless it has become organized under the laws relating to banking. . . ."⁹⁵ Organization of corporations or trust companies either under federal or Kentucky law would subject shareholders to personal liability to assessment to the extent of the par value of their investment in the corporation,⁹⁶ and would subject the corporation to supervision and regulation under the National Bank Act or the Kentucky Department of Banking.⁹⁷ They also knew that stockholders in banks, trust companies, guaranty companies, investment companies were liable to assessments to the extent of the par value of their investment in such companies,⁹⁸ that transfers of such stock did not release shareholders from their personal liability,⁹⁹ and that transferees thereof succeeded to the transferor's personal liability.¹⁰⁰ They also knew that a foreign general business corporation could not undertake any business or activity in Kentucky not permitted to Kentucky business corporations.¹

31. The officers, directors and attorneys of the Bank knew that it was illegal for any corporation to hold; either directly or indirectly, more than one-half of the capital stock of any bank² or trust company.³ They also knew that Section 36 of the National Bank Act "prohibited member banks of the Federal Reserve System from establishing

⁹⁴ Ky. Stat. 538.

⁹⁵ Ky. Stat. 56.

⁹⁶ 12 U. S. C. A. 64, Ky. Stat. 547.

⁹⁷ Ky. Stat. 165 a-1.

⁹⁸ Ky. Stat. 547.

⁹⁹ Ky. Stat. 547.

¹⁰⁰ Ky. Stat. 545.

¹ Ky. Const. 202.

² Carroll's Ky. Stat. Sec. 581.

³ Carroll's Ky. Stat. Sec. 609; Helm, Vol. III, pp. 92, 93; Ex. 32-2; Ex.

164 Helm's letters re changing Ky. Stat. limiting holding of bk. and tr. co. stock by one person.

⁴ 12 U. S. C. A. Sec. 36.

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branches outside city limits, but they hoped that no action would be taken to prevent the holding company's violation of the laws relating to the amount of bank or trust company stock to be held by one person⁵ and intended to circumvent the laws against branch banking and prohibiting a national bank from purchasing bank stocks⁶ by acquiring controlling interests and operating a chain of banks through the holding company.⁷

32. The officers, directors, shareholders and attorneys of the Bank who participated in the organization and promotion of BancoKentucky Company sought to avoid the operation and effect of the Kentucky statutes designed to protect bank and trust company depositors, creditors and the public from loss, by organizing the holding company under the general corporation laws of Delaware, which did not prohibit companies incorporated thereunder from engaging in activities illegal for Kentucky general business corporations but which Kentucky corporations could undertake only by submitting to supervision of banking officials and by subjecting their shareholders to personal liability to assessment.

33. On July 16, 1929 the officers, directors and attorneys and certain of the large stockholders of the Bank caused the Articles of Incorporation of BancoKentucky Company to be filed and secured a charter therefor under the general corporation laws of Delaware.

34. BancoKentucky Company never filed a statement with the Secretary of State of Kentucky as required by law,⁸ and never paid a license tax or filed a report with the

⁵ Helm, Vol. III, p. 65, 91; Ex. 164.

⁶ 12 U. S. C. A. 24, note 106.

⁷ H. Taylor, Vol. III, p. 254; Sackett Affidavit; Ex. 101 p. 1836 THE ROUND-UP; Ex. 79 p. 1775 Fed. Res. Comm. on branch, group and chain banking questionnaire; Ex. 79 p. 1779 Bank Cashier's answers to Fed. Res. Agent; Ex. 32-2

⁸ Carroll's Ky. Stat. Sec. 571; Ex. 69a Certificate by Deputy Sec'y. of State; Dodd, Vol. II, p. 52.

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Kentucky Tax Commission as required by law.⁹ The holding company did acquire the following percentages of the outstanding capital stock of the following banks, to-wit:^{*}

- 95% National Bank of Kentucky—Louisville, Ky.
- 95% Louisville Trust Company—Louisville, Ky.
- 80% Pearl Market Bank & Trust Co.—Cincinnati, O.
- 89% Brighton Bank & Trust Co.—Cincinnati, O.
- 91% Central Savings Bank & Trust Co.—Covington, Ky.
- 32% Peoples Liberty Bank & Trust Co.—Covington, Ky.
- 92% First National Bank of Paducah—Paducah, Ky.
- 89% Ashland National Bank—Ashland, Ky.
- 90% Security Bank of Louisville—Louisville, Ky.
- 58% Mechanics Trust & Savings Bank—Paducah, Ky.

and did indirectly engage in and carry on the business of banking in Kentucky and Ohio.¹⁰

35. On July 19, 1929 the officers and directors of the bank sent to all shareholders of the Bank-Trust Company a BancoKentucky Company prospectus called a Plan of Reorganization, over the signatures of all the officers and directors of the Bank-Trust Company and the Trustees for the Trustees' Participation Certificate holders.¹¹ Enclosed therewith was a form providing for the subscription for BancoKentucky Company shares by the exchange of Trustees' Participation Certificates or for cash, which form referred to the Reorganization Plan outlined in the prospectus¹² and to "non-assessable" feature of the shares to be issued thereunder.

⁹ Carroll's Ky. Stat. Sec. 4189-2-3; Ex. 69b Certificate of Ky. Dept. of Revenue.

¹⁰ Vol. II, pp. 94-97 Stip. Para. 92, 94, 96, 97, 98, 99, 100, 101; Ex. 79 p. 1780 list of affiliated or controlled banks supplied by Bank Cashier to Fed. Res. Investigating Committee.

¹¹ Ex. 24-3 the Plan, Stip. Par. 30.

¹² Ex. 24-4 Subscription and Exchange form; Stip. Par. 31, Vol. II, p. 83.

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36. The Reorganization Plan ¹³ explained to shareholders that the officers and directors of the Bank-Trust Company had studied the changing conditions in the banking business for the purpose of preparing the National Bank of Kentucky and the Louisville Trust Company to take advantage of new opportunities and had unanimously concluded that the two banks and their business should be reorganized by adding a third corporation, BancoKentucky Company, for the purpose of making the operations of the two banks more profitable for the shareholders. The stockholders were informed that BancoKentucky Company could exercise many profitable and important functions beyond the powers of either the Bank or the Trust Company. The Plan of Reorganization provided that BancoKentucky Company's 2,000,000 voting shares of the par value of \$10.00 each should be sold in accordance with the Plan of Reorganization at a valuation of \$25.00 each. The Plan was expressly conditioned upon BancoKentucky Company's stock, or at least a substantial majority of it, being owned by Trustees' Participation Certificate holders, upon the company's acquisition of at least a majority of the Trustees' Participation Certificates and upon BancoKentucky Company's being managed and operated by the Boards of Directors and officers of the Bank-Trust Company. BancoKentucky Company's entire stock was offered to and preempted in favor of the Trustees' Participation Certificate holders through the Trustees as agents for the Trustees' Participation Certificate holders.¹⁴ The Trustees' Participation Certificate holders were given the right to desposit their Trustees' Participation Certificates in exchange for BancoKentucky Company shares, by September 19, 1929 on the basis of two \$10.00 par shares of Banco for each

¹³ Ex. 24-3 Plan.

¹⁴ Ex. 44 Trustees' Interim Receipt.

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\$10.00 par Trustees' Participation Certificate. Each depositing Trustees' Participation Certificate holder was offered the right to subscribe for additional Banco stock at \$25.00 per share.

37. It is conceded that full publicity was given the Plan for the reorganization of the National Bank of Kentucky—Louisville Trust Company and to the activity of the holding company in acquiring shares of other banks and trust companies in the public press and in various financial and investment publications throughout the country.¹⁵ Publicity of every kind was given to every step from the time the Plan was announced July 19, 1929 until just before the failure of the Bank-Trust Company and the holding company.¹⁶

38. The Reorganization Plan was printed and published in full in the public press. The substance of the information published was that the National Bank of Kentucky had organized BancoKentucky Company, a Delaware corporation, as a holding company to reorganize the National Bank

¹⁵ Stip. Par. 35.

¹⁶ Ex. 122 p. 1893; Helm, Vol. III, p. 51; Dodd, Vol. II, p. 228, 286. Ex. 26 newspapers; Ex. 26-1 Am. Bkrs., Daily, clipping on Banco; Ex. 26-9 Letter from Am. Bkrs. to Banco; Ex. 26-8 Banco advises Am. Bkrs. that Banco was comprised of 6 named banks; Ex. 75 letter from Chicago Stock Exchange re listing 10/2/29; Ex. 209 Chicago Stock Exchange circular on Banco issued 10/2/29; Ex. 74 Banco's application to Chicago Stock Exchange for listing the holding company shares; Ex. 71 Banco's application to Louisville Stock Exchange for listing of holding company shares; Ex. 97 part of E. W. Hayes & Co. market letter October 1929; Ex. 172-B Blyth & Co. submits proof sheet to bank of data on Banco 10/7/29; Ex. 172-A proof sheet; Ex. 173 Blyth & Co. pamphlet on Banco; Ex. 172 copy of Blyth & Company's form letter circulated in Louisville 10/14/29; Ex. 114-2 New York broker writes Banco for information 10/14/29; Ex. 114-1 Banco's answer of 10/22/29; Ex. 98 Chicago Statistics Company submits, 11/5/29, analysis of Banco stock to appear in company's manual; Ex. 100 Chicago Statistics Company submits material on Banco to be published in January, 1930 edition of its manual of securities; Ex. 111-2 New York specialists in bank stock writes Banco 12/2/29; Ex. 111-1 Banco replies giving Banco's bank stock holdings; Ex. 101 THE ROUND-UP publication on Banco; Ex. 102 Barron's National Financial Weekly writes Banco about controlled banks and receives information on Banco's nine banks; Ex. 26-7 news item in the Commercial and Financial Chronicle of New York 11/23/29 on Banco; Ex. 210 Chicago Stock Exchange Circular issued April, 1930; Burkholder, Vol. II, p. 214.

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of Kentucky and its business, to hold the stock of the Bank and to acquire control and operate a chain of banks and trust companies in the Middle West under the management of the officers and directors of the National Bank of Kentucky. Banco Kentucky Company was to function as a holding company for bank stocks and to engage in activities along banking lines.¹⁷ The plan was referred to as a "merger"¹⁸ and a financial "combination"¹⁹ of the National Bank of Kentucky, Louisville Trust Company and Banco Kentucky Company. The Trustees' Participation Certificates were referred to as the "old" stock of the Bank and Banco shares as the "new" stock.²⁰ All the holding company stock was offered to and preempted in favor of National Bank of Kentucky shareholders in exchange for their bank stock and cash.²¹ The cash²² paid into the holding company and the later increase in its authorized capital stock²³ were intended to be used and were used primarily to acquire controlling stock interests in other banks. The holding company limited its investments principally and primarily to bank shares²⁴ and was a bank holding corporation, not an ordinary business corporation.²⁵ It was referred to as a banking institution, a banking company, en-

¹⁷ Ex. 26 p. 1176 Herald Post financial page Sept. 14, 1929.

¹⁸ Ex. 26 p. 1178 Herald Post financial page Sept. 17, 1929.

¹⁹ Ex. 26-1 American Bankers news item July 14, 1929.

²⁰ Ex. 26 p. 1173 Courier Journal financial page Aug. 17, 1929; p. 1179 Herald Post financial page Sept. 20, 1929; p. 1181 Courier Journal financial page Oct. 5, 1929; p. 1198 Herald Post financial page Mar. 8, 1930.

²¹ Ex. 26-1 Am. Bkrs. item on Banco July 24, 1929; Ex. 24-3; Ex. 26 Op. 1176 Herald Post financial page Sept. 14, 1929.

²² Ex. 37-1; Ex. 37-15 correspondence between Bk. Vice Pres. J. J. Hayes and shareholders; Ex. 38-4; Ex. 38-5 correspondence between Bk. Vice Pres. H. J. Angermeyer and shareholders; Ex. 74 p. 1723 Ans. to Chicago Stock Exchange questionnaire to be submitted to Committee on Listing giving history of Banco; E Taylor, Vol. III, p. 265, 266; H. Taylor, Vol. III, p. 257; Hieatt, Vol. III, p. 204.

²³ Ex. 209 Chicago Stock Exchange circular Oct. 2, 1929; Ex. 173 Blyth & Co. booklet on Banco; Ex. 101 THE ROUND-UP article on Banco; Ex. 210 Chicago Stock Exchange circular on Banco issued Apr. 1930.

²⁴ Ex. 173 Blyth & Co. circular on Banco.

²⁵ Ex. 101 THE ROUND-UP.

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gaged in the banking business and its shares were described as bank stock.²⁶

39. Immediately after the public announcement of the Bank's Plan of Reorganization, its officers, directors and employees began an intensive campaign to secure the exchange of all outstanding Trustees' Participation Certificates for holding company stock and subscriptions for its stock.²⁷ Copies of the Plan were distributed to prospective purchasers and used as a prospectus.²⁸ Shareholders who inquired were advised that one of the advantages of exchanging their Trustees' Participation Certificates for holding company shares was the avoidance of double liability.²⁹ Prospective shareholders were informed that the holding company would receive and distribute dividends from the Bank-Trust Company to its shareholders;³⁰ that the holding company would be operated and managed by the officers and directors of the Bank-Trust Company³¹ and that cash subscribed to the holding company would be used to acquire controlling share interests in other banks.³²

40. The Bank-Trust Company loaned and advanced about seven millions³³ of the \$9,869,650.00 paid to Banco Ken-

²⁶ Ex. 173 Blyth & Co. circular; Ex. 172 Blyth & Co. form letter circulated in Louis. Oct. 1929; Ex. 26 p. 1191 Herald Post fin. page Dec. 7, 1929; p. 1193 Courier Journal fin. page 12/22/29; p. 1195 Courier Journal Dec. 28, 1929.

²⁷ Ex. 27 Bean's letter to Brown 7/28/29 suggesting answers to questions being asked by stockholders about Banco; Ex. 30 Bean's letter to Dirs. 8/13/29 on how good had the investment been in Nat'l. Bk. of Ky. stock; Ex. 31 Bean's letter to Jones 8/24/29 re Judge Stites' opinion that Banco was merely a holding company and suggesting that Banco announce the purchase of 3 or 4 banks; Ex. 32 Bean's letter to Jones 9/5/29 and enclosed form letter to stockholders urging conversion of "old bank stock" into Banco stock; Dodd, Vol. II, p. 264; Hieatt, Vol. III, p. 204, 265.

²⁸ Exs. 36-5-6-7-9-10-16-17-18-23-26; Exs. 37-12-13-16-17; Ex. 38-4; Ex. 39-5 bank officers' correspondence with stockholders and prospective stockholders.

²⁹ Ex. 27 p. 1264; Ex. 37-2-3; Ex. 122 p. 1888 Louis. Tr. Co. Ans.; Ex. 123 p. 1909 Louis. Tr. Co. Ans.

³⁰ Ex. 36-11-24; Ex. 37-15.

³¹ Ex. 36-11-19; Ex. 35-1-24; Ex. 39-8; Ex. 24-3.

³² Ex. 37-1-5; Ex. 38-1-4; Ex. 74 p. 1723; Ex. 209; Ex. 173; Ex. 210; E. Taylor, Vol. III, p. 265, 266; H. Taylor, Vol. III, p. 257; Hieatt, Vol. III, p. 205.

³³ Ex. 134-5 Bean's letter to Brown Nov. 4, 1927 recounting the success of the campaign to secure exchange of Bank stock for Banco and subscriptions for its shares.

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tucky Company on subscriptions for its shares," which advances were chiefly secured by shares of the holding company. As soon as the Reorganization Plan was declared operative and before the subscriptions to holding company stock became payable, negotiations begun by the president of the Bank were concluded for acquiring controlling stock interests in the Pearl Market Bank and Trust Company of Cincinnati, Ohio and the Brighton Bank and Trust Company, also of Cincinnati, Ohio.³⁴ Thereafter the holding company acquired 47,854 shares of Pearl Market Bank stock (out of a total of 60,000 shares) for \$2,200,388.30 in cash and 54,936 shares of BancoKentucky Company stock. It also acquired 43,290 shares of Brighton Bank stock for \$3,323,409.90 in cash and 31,459 shares of BancoKentucky Company stock.³⁵

41. All of the certificates issued by the National Bank of Kentucky and the Louisville Trust Company evidencing shares of their capital stock were deposited with the Trustees under the Trust Agreement of April 22, 1927, except a trust company certificate for 5 shares. Under the Plan of Reorganization the shareholders of the Bank-Trust Company exchanged 540,484 Trustees' Participation Certificates, representing 37,721.62 shares of the Bank-Trust Company stock for certificates issued by BancoKentucky Company. BancoKentucky Company became the record owner of 95% of the Trustees' Participation Certificates and subject to the liability of a record owner of that percentage of the Bank and Trust Company's stock.³⁷

³⁴ Ex. 124 Accountant's report of loans made by N. B. K. to finance Banco subscriptions; Ex. 134-5 Bean's letter to Brown of 11/4/29; E. Taylor Vol. III, p. 265; Stewart, Vol. II, p. 189; Dodd, Vol. II, pp. 55, 273; Vaughan, Vol. III, p. 32; Carroll, Vol. III, p. 166; Boomer, Vol. III, p. 241; Ex. 196 Report of losses on loans made by N. B. K. to pay subscriptions for Banco stock 9/5/29 to 11/7/29.

³⁵ Ex. 23 p. 1070; Dodd, Vol. II, p. 262; Ex. 23 p. 1073; Ex. 24-5 Banco's letter to stockholders 9/12/29 fixing 9/19/29 as last date for exchanging T. P. Cs for Banco and advising that several proposals from banks could not be acted upon until effective date of Plan.

³⁶ Stip. Par. 94, Vol. II p. 95.

³⁷ Stip. Pars. 90, 92, Vol. II, pp. 93, 94.

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42. Superficially it appeared that the Trustees voted the Bank and Trust Company's stock, that the holding company voted the Trustees' Participation Certificates and that defendants and other holding company shareholders voted the stock of BancoKentucky Company. However, under the Trust Agreement the voting rights in all the Bank-Trust Company stock was vested in the six Trustees, directors of the Bank-Trust Company, subject to direction by the Advisory Committee, consisting of the entire board of directors of the Bank-Trust Company. All members of the Advisory Committee were directors of BancoKentucky Company and exercised voting rights of the holding company as registered holder of 95% of the Trustees' Participation Certificates. BancoKentucky Company and its directors and officers were controlled by defendants and all other holders of its shares. All directors of the Bank-Trust Company were, in accordance with the Plan of Reorganization, directors of the holding company.³⁸ The president, vice-president and secretary-treasurer of the holding company were the president, vice-president and cashier of the Bank.³⁹ Pursuant to the Plan of Reorganization the shareholders of BancoKentucky Company elected the directors of the Bank-Trust Company directors of the holding company. The directors of the holding company, by reason of its record ownership of 95% of the Trustees' Participation Certificates, then elected themselves directors of the Bank-Trust Company, and appointed the officers of the holding company, the officers of the Bank and the Trust Company, with whom they managed and controlled BancoKentucky Company, the Bank-Trust Company and the other banks and trust companies in which the holding company acquired controlling stock interests.⁴⁰ Persons who

³⁸ Ex. 24-3 Plan of Reorganization.

³⁹ Stip. Par. 93, Vol. II, p. 94; Ex. 23 p. 1099; Speed, Vol. III, p. 189.

⁴⁰ Ex. 79 p. 1779 Fed. Res. questionnaire on group banking and Banco's answer showing controlled banks; Girdler, Vol. III, p. 221; Carroll, Vol. III, pp. 162, 163.

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had previously held certificates issued by the Bank or certificates issued by the Trustees at all times held at least 66.68% of the holding company's stock, the percentage held by them when the Bank closed.⁴¹

43. After the unification of the Bank and Trust Company, dividends were distributed to shareholders through the Trustees.⁴² From the time the Plan of Reorganization became operative until the failure of the Bank 95% of the dividends declared by the directors of the Bank-Trust Company were distributed to holding company shareholders through the Trustees and the holding company.⁴³ The Bank, the Trust Company and the holding company dividends were all declared by the directors thereof and were payable at the same times.⁴⁴ From the unification of the Bank and Trust Company to their closing, November 16, 1930, each paid annual dividends equal to 16% of the par value of their capital. The annual dividend rate of the holding company was 8% of the par value of its outstanding stock. One \$100.00 par Trustees' Participation Certificate or the ten \$10.00 par Trustees' Participation Certificates into which the former was converted, paid dividends of \$4.00 per quarter. A shareholder of the Bank, who deposited \$100.00 in par value of Trustees' Participation Certificates under the Plan received twenty \$10.00 par shares of Banco and thereafter received thereon dividends of \$4.00 per quarter. The few who retained Trustees' Participation Certificates continued to receive only their proportionate part of the dividends paid by the Bank and the Trust Company. Banco Kentucky Company shareholders

⁴¹ Ex. 148 analysis of Banco's shareholders as of date of bank's failure; Ex. 198 summary showing outstanding shares of Banco Nov. 17, 1930 held by persons who had traded T. P. C.s for holding company; Helm, Vol. III, p. 65.

⁴² Ex. 7 p. 20 Trs. Agree.; Ex. 8 p. 38 Trustees' Minutes.

⁴³ Ex. 69 Accountant's report of dividends rec'd. by Trustees and distribution to Banco from 10/2/29 to 11/17/30; Stip. Par. 117, Vol. II, p. 101.

⁴⁴ Ex. 127 Report of dividends declared by Bk.-Tr. Co. and Banco subsequent to 10/2/29.

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received a smaller proportionate share of the dividends paid by the Bank and the Trust Company but they participated in the dividends paid by the other eight banks and trust companies in the holding company chain.⁴⁵ All of the income of the holding company (except \$750.00 in dividends on insurance stock and \$2707.40 as interest on stock subscriptions) came from the banking units in the holding company chain.⁴⁶ Three-quarters of its income came from the Bank-Trust Company. Defendants and other shareholders in Banco Kentucky Company received all the dividends paid by the Bank, the Trust Company and the other bank and trust company units in the holding company chain on the shares registered in the name of the holding company.⁴⁷

44. When the Bank failed 88.71% of Banco's 2,072,468 issued and outstanding shares were⁴⁸ held by persons who had participated in the Plan for Reorganizing the Bank by exchanging Trustees' Participation Certificates, or Interim Receipts (representing certificates deposited with the Trustees as agents for shareholders under the Plan) or shares of other banks which became units in the Banco chain, for Banco shares or had subscribed for Banco shares under said Plan. 66.68% of Banco's outstanding shares were then held by persons who had exchanged Trustees' Participation Certificates, or Interim Receipts for Banco shares. 10.56% of all outstanding Banco shares were held by persons whose shares were otherwise acquired.⁴⁹

45. Persons who exchanged Trustees' Participation Certificates for holding company shares had contracted and

⁴⁵ Ex. 123 p. 1908 Louis. Tr. Co. Answer.

⁴⁶ Ex. 68 analysis of Banco operations 10/1/29 to 11/22/30.

⁴⁷ Ex. 68.

⁴⁸ Excluding 400,000 shares in the name of Caldwell & Co. and held by the Louis. Tr. Co. upon which no dividends were paid because the transaction under which they were issued was never consummated.

⁴⁹ Ex. 148 classification of Banco shareholders 11/17/30; Stip. Par. 120, Vol. II, p. 103.

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promised to respond to the liability of a record owner for any assessment levied on the Bank's shares and registered in the names of the Trustees, in proportion to their holdings of Trustees' Participation Certificates, in addition to their liability as actual or beneficial owner of the Bank's stock.⁵⁰ Each executed a Subscription and Exchange form by which he acknowledged that he had deposited his Trustees' Participation Certificates with the Trustees, as his Agents, under the Plan of Reorganization.⁵¹ Each received an Interim Receipt for the Trustees' Participation Certificates deposited with the Agent Trustees providing for their acceptance of holding company stock or the return of the Trustees' Participation Certificates depending upon the completion of the Plan of Reorganization.⁵² Each knew that, as a holder of Trustees' Participation Certificates, he was personally liable to any assessment which might be levied on National Bank of Kentucky shareholders or Louisville Trust Company shareholders to the extent of the par value of his Trustees' Participation Certificates.⁵³ Each regarded Trustees' Participation Certificates as representing National Bank of Kentucky shares,⁵⁴ and the holding company stock received in exchange therefor, as the same property in a different form.⁵⁵ None considered that he had received a taxable capital gain or suffered a deductible capital loss by reason of the exchange,⁵⁶ and in exchanging Trustees' Participation Certificates for hold-

⁵⁰ Ex. 7 Trs. Agree.; Ex. 10 T. P. C.

⁵¹ Agreed Order February 3, 1939.

⁵² Ex. 44 Interim Receipt for deposited T. P. C.s.

⁵³ Helm Vol. III 70, 71, 72; Boomer Vol. III 233; H. Taylor Vol. III 255; Hieatt Vol. III 211; Speed Vol. III 181, 183; Carroll Vol. III 160.

⁵⁴ Stip. Par. 12, Vol. II p. 79; Ex. 26 pp. 1169-1170-1173-1174-1175-1178-1179-1181-1185 newspapers; Ex. 158-16 p. 2041.

⁵⁵ Ex. 25-5 Vaughan's letter to Brown 7/9/29; Ex. 123 p. 1906-7 Louis. Tr. Co. Answer; Ex. 122 p. 1888-90 Louis Tr. Co. Answer; Cammack Vol. III 129.

⁵⁶ Sackett Affidavit; Ex. 204 Speed's record of N. B. K. stockholdings; Ex. 25 Vaughan's opinion to Brown suggesting the clinching of shareholders' immunity to taxation; Ex. 25-5 Vaughan's letter to Brown 7/9/29.

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ing company shares no out and out transfer was either contemplated or effected. These exchanges were not sales and did not divorce the persons who had theretofore owned the Bank's stock from dividends and benefits of the ownership thereof.

46. All defendants who subscribed for holding company shares signed a Subscription and Exchange form⁸⁷ acknowledging that such subscription was under the Plan for Reorganization of the unified banks and their business, under the prospectus.⁸⁸

47. All defendants who transferred to BancoKentucky Company shares of banks, other than the National Bank of Kentucky or the Louisville Trust Company, in exchange for holding company shares, knew that before such exchange they were shareholders in one bank and personally liable to assessment for the benefit of the creditors of such bank and that after such exchange they had proportionate interests in the banking units of the BancoKentucky Company chain, evidenced by certificates purporting to be non-assessable. They knew that their investment had changed from a share interest in one bank to a beneficial share interest in all banks in the chain.

48. It is conceded that defendants and all other BancoKentucky Company shareholders, acquired their holding company shares in the belief that BancoKentucky Company would do the things indicated in the Plan of Reorganization⁸⁹ and with the expectation of securing a share in the profits resulting from the operations of the National Bank of Kentucky-Louisville Trust Company under the Plan of Reorganization. They all knew the primary purpose for the organization of BancoKentucky Company was to own, operate and control a chain of banks under the

⁸⁷ Ex. 24-4 Subscription and Exchange Form.

⁸⁸ Ex. 24-3 Plan, and Agreed Order February 3, 1939.

⁸⁹ Agreed Order February 3, 1939.

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management and direction of the officers and directors of the National Bank of Kentucky and that the cash subscribed for holding company shares was to be used primarily and principally in the acquisition of additional banks.

49. BancoKentucky Company was not an operating company. It had no office or officers other than the office and officers of the National Bank of Kentucky. It had no directors or employees other than the directors and employees of the Bank-Trust Company.⁶⁰ During its corporate life it primarily and principally acted as a holding company for the stock of banks from which it received 99.73% of its income.⁶¹

50. The directors of the National Bank of Kentucky-Louisville Trust Company directed the affairs of these two banking associations. The same men were directors of the BancoKentucky Company⁶² and through its stock control they nominated the directors and controlled the affairs and policies of all bank subsidiaries in the BancoKentucky Company chain.⁶³ The president of the Bank and of BancoKentucky Company was on the board of directors of all banks in the chain.⁶⁴ They declared the dividends to be paid by the unified Bank-Trust Company, controlled the

⁶⁰ Dodd Vol. II 237, 280, 281, 282; Carroll Vol. III 156, 173; Helm Vol. III 54; Ex. 73 p. 1713 Chicago Stock Exchange listing questionnaire; Speed Vol. III 189; Ex. 24-3 Plan; Ex. 23 Banco minutes.

⁶¹ Ex. 74 Appl. to Chicago Stock Exchange; Ex. 71 Appl. to Louis. Stock Exchange; Ex. 31 Bean's letter to Jones 8/24/29 relating Stites' opinion that Banco was merely a holding company; Ex. 109 Banco's Federal income tax return for 1929; Cammack Vol. III 125; Ex. 122 p. 1891; Carroll Vol. III 151; Ex. 128 Banco's annual report to Delaware filed Jan. 7, 1930; Ex. 129 Banco's annual report to Delaware filed Dec. 31, 1930.

⁶² Ex. 24-3 p. 1140; Ex. 23 p. 1085 Banco minutes; Ex. 161 p. 2037 Helm's letter to Ky. Atty. Gen. 8/29/29.

⁶³ Girdler Vol. III 221; Ex. 79 Fed. Res. investigation of branch and group banking; Ex. 23 p. 1099 Banco minutes; Ex. 92 p. 1822 Banco's letter to Cincinnati directors 1/14/30 supplying qualifying shares for 6 directors; Ex. 95 advised that Banco's stock in Cinti. bank placed in name of directors endorsed by directors; Ex. 91 Cinti. directors return dividends on qualifying shares; Ex. 90 Cinti. directors' return dividends on qualifying shares; H. Taylor Vol. III 258.

⁶⁴ Ex. 115 Jones letter to Ashland Nat'l. Bank.

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dividend policies of the other units in the chain and paid all dividends received from said banking units to the holders of BancoKentucky Company shares.⁶⁵ The holding company engaged in no activity other than the control and operation of banks and trust companies⁶⁶ except that, just before the collapse, it took over some of the Bank's worthless and most severely criticized assets at the insistence of National Bank Examiners.⁶⁷ The directors of the Bank considered Bank assets as holding company assets and vice versa,⁶⁸ and were frequently unable to distinguish between their actions as directors of the Bank and their actions as directors of the holding company.⁶⁹ BancoKentucky Company functioned only as a holding company for bank shares, dividends from which, with interest on holding company deposits in controlled banks, constituted its sole source of income.⁷⁰

51. When the National Bank of Kentucky failed November 16, 1930, the holding company had no assets of any substantial value other than shares of bank and trust company stock.⁷¹ It held shares in ten banks and trust companies on which it was liable, as owner of record, to stock assessments in the sum of \$7,770,780.00.⁷² BancoKentucky

⁶⁵ Ex. 68 report on Banco operations; Ex. 127 report on dividends declared by Bank-Tr. Co.-Banco subsequent to 10/2/29; Stip. Par. 117, Vol. II p. 101.

⁶⁶ Ex. 73 p. 1713 Chicago Stock Exchange questionnaire; Ex. 72 Banco's letter to Chicago Stock Exchange 3/19/30 advising that Banco was a holding company for Bk.-Tr. Co. stock and owned no other property; Ex. 68 report on Banco operations; Ex. 26-8 Banco's letter to Am. Bkrs.; Ex. 209 Chicago Stock Exchange circular; Ex. 210 same; Ex. 71 Louis. Stock Exchange app.; Ex. 173 Blyth & Co. circular on Banco.

⁶⁷ Dodd Vol. II 276, 278; Helm Vol. III 73-74; Ex. 23 p. 1113 Banco minutes; Ex. 20 p. 983 Examiner's report 9/17/30, Exam. Neill's letter to Bd. of Dir. of 10/11/30 and Dirs. signed reply; Mooney Vol. II 168; Ex. 20 p. 934-5 Exam. Neill's comment on Banco-Caldwell contract; Helm Vol. III 100; Neill Vol. II 153; Stip. Par. 110, Vol. II p. 99; Speed Vol. III 189, 190; Ex. 21 p. 1041 Bk. Dirs. Minutes. 10/9/30.

⁶⁸ Speed Vol. III 190, 191; Carroll Vol. III 171; Hieatt Vol. III 206, 207.

⁶⁹ Dodd Vol. II 251, 252; Hieatt Vol. III 215; Helm Vol. III 88; Ex. 163 Helm's letter to Bk. 4/30/30 enclosing statement for services in attempting to secure conversion of St. Bd. of Education T. P. C. into Banco.

⁷⁰ Ex. 68 analysis of Banco operations showing income, expenses and dividends.

⁷¹ Ex. 66 p. 1678 Petition for appointment of Rec'r. for Banco.

⁷² Stip. Par. 102, Vol. II p. 97.

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Company was further indebted in the sum of \$1,734,296.16 on notes payable, overdrafts and taxes.⁷³ Its only assets, outside of shares of bank and trust company stock, were 625 shares of Union Central Life Insurance Company stock, a \$2,000,000.00 note of James B. Brown, President of the Bank and of the holding company, 10,000 shares of Caldwell & Company, \$580,000.00 in notes of Murray Rubber Company and a \$20,000.00 participating interest in notes of Louis Humphrey.⁷⁴ The insurance company stock was worth about \$25,000.00,⁷⁵ the Brown note about \$442,580.75, the value of the collateral.⁷⁶ The Caldwell & Company stock,⁷⁷ the Murray Rubber Company notes and the Louis Humphrey participation were worthless⁷⁸ when the holding company acquired them and the transaction through which Banco received the Caldwell stock was never consummated.

52. The Louisville Trust Company board of directors acted in conjunction with the board of directors of the National Bank of Kentucky and voted to close the Trust Company November 16, 1930. A 100% assessment was levied against the shareholders of the trust company July 3, 1931.⁷⁹

53. The National Bank of Kentucky and the Louisville Trust Company, Banco Kentucky Company and the other banking units in the holding company chain of banks were so closely associated and identified with one another in the minds of the public, stockholders and depositors in the several unit banks that the closing of the National Bank of Kentucky and the Louisville Trust Company precipitated

⁷³ Ex. 68 analysis of Banco operations; Ex. 126 analysis of assets on Banco records.

⁷⁴ Ex. 126 Banco assets.

⁷⁵ Stip. Par. 108, Vol. II p. 99.

⁷⁶ Stip. Par. 107, Vol. II p. 98.

⁷⁷ Dodd Vol. II 65; Carroll Vol. III 169; Helm Vol. III 103; Stip. Pars. 122-123, Vol. II p. 105.

⁷⁸ Neill Vol. II 149, 153; Speed Vol. III 189-190.

⁷⁹ Ex. 156 Circuit Court finding of insolvency of Louis. Trs.

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runs on all other units of the BancoKentucky chain,⁸⁰ and the holding company's forced sale of its salable bank shares for nominal prices and the insolvency and receivership of the BancoKentucky Company.⁸¹

54. On November 24, 1931, the officers and directors of the Bank-Trust Company, acting as officers and directors of the holding company, filed a petition in the Jefferson County Circuit Court praying for the appointment of a Receiver.⁸² The allegations of the petition were confessed by the holding company,⁸³ approved by the board of directors⁸⁴ and are admitted to be true in this case.⁸⁵ The petition asserted, among other things, that prior to the failure of the National Bank of Kentucky substantially all of the property and assets of BancoKentucky Company consisted of bank stock; that the failure of the bank made it impossible to continue the holding company for the purposes for which it was organized; that the holding company had immediately disposed of its stock in the Brighton Bank and Trust Company and Pearl Market Bank and Trust Company of Cincinnati, the Peoples Liberty Bank and Trust Company and Central Savings Bank and Trust Company of Covington, Kentucky, and stock of the Ashland National Bank, Ashland, Kentucky; that the stock of the First National Bank of Paducah was of doubtful value; that the proceeds of said sales with the stock of the National Bank of Kentucky and Louisville Trust Company constituted the only assets of the holding company. The sales of the sal-

⁸⁰ Carroll Vol. III 171, 172; Ex. 23 p. 1120 Banco Dirs. Minutes 11/18/30.

⁸¹ Ex. 23 p. 1118-19, 20, 21 Banco Dirs. Minutes 11/17/30; Ex. 179 report of special committee on sale of Cinti. & Covington banks 11/19/30; Ex. 23 p. 1122 Dirs. Minutes 11/19/30; Ex. 23 p. 1127 Dirs. Minutes 11/20/30; Ex. 23 p. 1128-29-31 Dirs. Minutes 11/29/29, 12/12/30; Ex. 122 p. 1891 Louis. Tr. Ans.; Ex. 123 p. 1909.

⁸² Ex. 66 Petition for Rec'r. for Banco; Ex. 129 Banco's annual report to Delaware filed 12/31/30.

⁸³ Ex. 67 Banco's answer to Directors petition for receiver.

⁸⁴ Ex. 23, p. 1131 Dirs. approve holding company receiver.

⁸⁵ Dodd Vol. II 289; Carroll Vol. III 161, 162.

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able bank stock were made for nominal amounts, for the purpose of preventing assessments against the holding company" and the sums received therefor by the holding company, with sums realized upon the sale of the holding company's other assets, have been only sufficient to pay a 7% dividend, in December, 1934, to creditors of the holding company."⁸⁷

55. On November 20, 1930, the Bank and Trust Company directors, acting as holding company directors, authorized proceedings for the dissolution of the Trust under the Agreement of April 22, 1927, and the distribution of the Bank and Trust Company shares registered in the name of the Trustees to BancoKentucky Company."⁸⁸ Thereafter the Trust was dissolved on December 26, 1930," and, in an action instituted by the Receiver of the holding company against the Trustees, the Jefferson Circuit Court directed the Trustees to distribute to the Receiver for the holding company 37,721.624 shares of the stock of the Bank and 16,326.77 shares of the Trust Company."⁸⁹ The bank was authorized to cancel 37,820 shares of its stock registered in the names of the Trustees and in lieu thereof to issue certificates for 37,721.624 shares to BancoKentucky Company as owner thereof."⁹¹

56. The Trustees, under the Trust Agreement of April 22, 1927, held the capital stock of the National Bank of Kentucky as agents for the registered holders of Trustees' Participation Certificates who were at all times subject to the liability of an owner of record of stock of the National Bank of Kentucky.

⁸⁶ Ex. 179 Committee's report on sale of Cincinnati banks.

⁸⁷ Stip. Par. 112, Vol. II p. 100.

⁸⁸ Ex. 23 p. 1127 Dirs. Minutes 11/20/30.

⁸⁹ Ex. 8 p. 142; 145 Minutes of special meeting of Trustees 11/24/30 and 12/26/30.

⁹⁰ Ex. 8 p. 147 to 152 Minutes of Trustees special meeting 6/3/31.

⁹¹ Ex. 8 p. 148 Trustees' Minutes 6/3/31.

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57. BancoKentucky Company was organized by the officers, directors and the Trustees' Participation Certificate holders of the National Bank of Kentucky and Louisville Trust Company as a holding company, for their convenience, profit and advantage, and said company was the corporate agency and instrumentality of the shareholders thereof to hold bank stocks.

58. The holders of shares of BancoKentucky Company had and exercised, through the corporate agency of the holding company, all the rights and benefits of shareholders of the National Bank of Kentucky and of the Louisville Trust Company, to the extent of the Trustees' Participation Certificates and bank and trust company shares nominally registered in the name of the holding company, and used the holding company as a mere instrumentality and agency to own, control and operate a group of state and national banks.

59. At the time of the closing of the National Bank of Kentucky there were issued and outstanding 2,072,468 shares of BancoKentucky Company stock. The holders of said shares were the real, actual and beneficial owners of 37,721.6214 shares of the capital stock of that bank. Each of said BancoKentucky Company shares represented .01820130462 of a share of National Bank of Kentucky stock and the assessment thereon, with interest at 6% per annum, to the date this action was commenced, and less the dividend paid by the holding company, is 2.305386 per share.²²

60. At the time of the levy of said assessment and requisition, upon shareholders of the National Bank of Kentucky, defendants were the record owners of the number of shares of stock of BancoKentucky Company set opposite

²² Ex. 120 calculation of defendants' proportionate ownership of N. B. K. stock and assessment liability thereon.

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their respective names on a schedule and list hereto attached and marked Exhibit A. The proportionate part of said assessment against each defendant is in the amount set opposite their respective names on said schedule.

61. In a suit filed by plaintiff's predecessor, *Laurent v. Anderson*,⁹³ plaintiff's predecessor recovered a judgment in an action at law against the Receiver of BancoKentucky Company for the assessment on the 37,721.6214 shares of National Bank of Kentucky stock by reason of the fact that the holding company was the holder of record of 540,484 Trustees' Participation Certificates (\$10.00 par) issued under the terms of the Trust Agreement of April 22, 1927. The pleadings, evidence and opinions of the trial and appellate courts in that case show that the question presented for decision was whether BancoKentucky Company, by reason of its record ownership of Trustees' Participation Certificates, was liable as a shareholder of the Bank under Section 64 of the National Bank Act, or whether Section 66 of that Act exempted BancoKentucky Company, as a beneficiary under said Trust Agreement, from liability. BancoKentucky Company, and the four other Trustees' Participation Certificate holders involved in that case, were held liable to assessment. The claim of the plaintiff in that case is consistent with one of plaintiff's claims here, namely, that BancoKentucky Company held the Trustees' Participation Certificates as the corporate agency and instrumentality of the holders of shares issued by BancoKentucky Company who were the real and beneficial owners of the Trustees' Participation Certificates and the shares of the Bank's stock represented thereby. No claim of plaintiff in that case is inconsistent with any of plaintiff's claims here. None of the issues here presented for

⁹³ 70 Fed. (2d) 819.

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decision were involved in or decided by the decision and judgment in *Laurent v. Anderson*.

62. The case of *Anderson v. Atherton*⁶² involved the Bank's claim against its directors for the recovery of losses alleged to have been sustained by the Bank on loans secured by stock of Banco Kentucky Company and by reason of the alleged illegal payment of dividends in violation of Sections 56 and 60 of the National Bank Act. The plaintiff alleged, and defendants denied, that the directors were liable for losses sustained by the Bank on such loans under Section 93 of the Act, subjecting directors to personal liability for damages sustained through their knowing violation or their having knowingly permitted bank officers or agents to violate provisions of the Act, because such loans were made "on the security of the shares of its (the Bank's) own capital stock" within the prohibition of Section 83 of the Act. The Court of Appeals for this Circuit noted in its opinion⁶³ that it was only passing upon the question of whether or not there had been a violation of the express terms of the National Bank Act. As to the non-officer directors it found none. The officer directors were held responsible to repay the Bank's loss on such loans to the extent of \$1,636,613.14.⁶⁴ The District Court dismissed plaintiff's petition as to all directors with respect to the claim that they were liable under Section 93 of the Act for violating Sections 56 and 60 of the Act in declaring and paying dividends and that claim was not further litigated.⁶⁵

Neither the parties nor the causes of action in the directors' liability case and in this case are the same. Many of the evidentiary facts appearing in the record in that case

⁶² 86 Fed. (2d) 518.

⁶³ 86 Fed. (2d) 518, 537.

⁶⁴ Deft's. Ex. 1, Vol. 1, p. 952-4.

⁶⁵ Deft's. Ex. 1, Vol. 1, p. 960.

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are present here but such evidentiary facts were offered and considered in connection with entirely different issues. Much of the evidence in this case was not before the court in the Atherton case. None of the issues here presented for decision were necessarily or actually adjudged in that case. Plaintiff's claims in this case are consistent with all the issues decided in the Atherton case.

63. Banco Kentucky Company was not a mere holding company for stock of the National Bank of Kentucky. It was created and conducted as a holding company for the shares of many banks. The purposes for its organization, as disclosed by its charter, were neither illegitimate nor unlawful. The use intended to be made of the corporation was not indicated by its charter powers. It was created primarily for the purpose of holding shares of National Bank of Kentucky and Louisville Trust Company stock and the shares of other banks and trust companies in the Ohio Valley to be acquired as units in the Banco group or chain of banks. The holding company secured cash subscriptions in the total amount of \$9,869,650.00 but before those subscriptions were callable on October 1, 1929, the company had committed itself to purchase controlling stock interests in the Brighton Bank & Trust Company and the Pearl Market Bank & Trust Company in Cincinnati, Ohio, for which it paid a total of \$5,523,798.20 in cash. By November 4, 1929, the holding company's cash was represented by a deposit in the National Bank of Kentucky in the sum of \$3,300,000.00 and a deposit in the Louisville Trust Company in the sum of \$550,000.00," an amount insufficient to have responded to a full assessment on National Bank of Kentucky shareholders aside from the holding company's assessment liability of over \$1,600,000.00 as a shareholder of the Louisville Trust Company

" Ex. 134-5.

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and its assessment liability on the shares of the two Cincinnati banks it then held. Pursuant to this purpose, Banco ultimately acquired controlling share interests in ten national and two state banks and trust companies, eight of which were in Kentucky and two were in Ohio. When the Bank and Trust Company failed the holding company was subject to assessment liability on all its bank and trust company shares of over seven and three-quarter million dollars and its liability for borrowed money, taxes and bank overdrafts were about one million and three-quarters. Aside from bank stocks it had no assets of any substantial value.

BancoKentucky Company was a separate legal entity. It was neither the bank's alter ego nor instrumentality, but the corporate entity of this Company was designed to be used and was used as an agency and instrumentality to hold bank stock for the use and benefit of the persons holding shares of BancoKentucky stock. The purpose for the organization of the company and the use made of its corporate entity were in direct violation of the Kentucky statutes prohibiting the ownership of more than fifty per cent of any bank or trust company stock by one person or corporation, were contrary to the purpose and policy of the Federal statutes limiting branch banking, were in direct violation of the Kentucky statute prohibiting non-banking corporations from either directly or indirectly engaging in the banking business in any way and were constructively fraudulent as to the creditors and depositors of the National Bank of Kentucky, in that the effect of the use of a holding corporation in this manner and as a non-conductor of liability for assessment would be to circumvent and evade Section 64 of the National Bank Act and the statutes of Kentucky and Ohio, imposing double liability on shareholders of bank and trust companies.

*Findings of Fact and Conclusions of Law***CONCLUSIONS OF LAW**

1. The Court has jurisdiction over this suit in equity.
2. There has been no misjoinder or improper joinder of parties defendant in this action.
3. The action and proceedings by the Receiver of the National Bank of Kentucky against BancoKentucky Company and its Receiver to collect the assessment upon the shares of the Bank, the findings and judgment therein and the recovery of a dividend on said judgment are not inconsistent with the facts upon which plaintiff's cause of action is based or the issues here and the defenses of election of persons, election of remedies, estoppel, res judicata and prior adjudication, allegedly arising because of the decision in *Laurent v. Anderson* and the recovery of a dividend on the judgment therein, are insufficient in law to constitute any defense to this suit.
4. No issue of fact or law here presented for decision has been decided or adjudged adversely to any claim made by plaintiff by the judgment and decision in *Atherton v. Anderson*, in which case the Bank, by its Receiver, sought to recover Bank losses incurred by reason of the violation of provisions of the National Bank Act by directors of the Bank. The decision, that shares of BancoKentucky Company stock were not shares of the Bank's own capital stock, within the prohibition of Section 83 of the National Bank Act, and that the Bank's non-officer directors were not liable for the losses sustained by the Bank on loans secured by BancoKentucky Company stock, under Section 93 of the National Bank Act, has no bearing on the question of the liability of any defendant in this case under Section 64 of said Act. Defendants here, who were directors of the Bank and defendants in the Atherton case, have not established any defense on the theory of res judicata or estoppel by judgment.

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The principles of law laid down by the Sixth Circuit Court of Appeals in *Barbour v. Thomas*⁹⁹ under the doctrine of stare decisis, are equally applicable here since the controlling facts in the two cases are substantially the same with one exception. In that case the holding company certificates for shares contained an express recognition of the owner's personal liability to assessment on the bank stocks nominally held by the holding corporation while here the holding company certificates and charter contain provisions of contrary import. This difference is not favorable to defendants.

5. The holders of Trustees' Participation Certificates, issued under the Trust Agreement of April 22, 1927, under which the shares of the National Bank of Kentucky and the Louisville Trust Company were unified, were shareholders of the National Bank of Kentucky under Section 64 of the National Bank Act and, after the exchange of their Trustees' Participation Certificates for shares of stock in Banco-Kentucky Company, they continued their proportionate ownership of National Bank of Kentucky stock in a different form but, disregarding mere form for substance, they continued to be shareholders of the National Bank of Kentucky and subject to proportionate individual liability to assessment under said federal statutes. Furthermore, since such exchange was not a sale or out and out transfer, whereby they divorced themselves from all interest in the Trustees' Participation Certificates, the liability to assessment for which they had expressly contracted by the acceptance of Trustees' Participation Certificates also continued in effect.

6. Banco-Kentucky Company was a corporate convenience, agency and instrumentality created and controlled by the real shareholders of the National Bank of Kentucky

⁹⁹ 86 Fed. (2d) 510.

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and held Trustees' Participation Certificates, representing 37,721.6214 shares of the capital stock of the National Bank of Kentucky as such agent, and trustee, or instrumentality for the persons who held certificates for shares issued by BancoKentucky Company.

7. The holders of certificates for shares issued by BancoKentucky Company were the real, actual and beneficial owners and holders of the 37,721.6214 shares of the capital stock of the National Bank of Kentucky represented by the Trustees' Participation Certificates registered in the name of BancoKentucky Company, and were the real and actual beneficial shareholders of said National Bank of Kentucky stock under Section 64 of the National Bank Act and are liable for the assessment levied upon the shareholders of said Bank in the proportion that the number of BancoKentucky Company shares held by them on November 17, 1930, or within sixty days prior thereto, bears to the total number of BancoKentucky Company shares then issued and outstanding, to wit: the sum of \$2.305386 for each share of BancoKentucky Company stock.

8. The holders of certificates for shares issued by BancoKentucky Company, having voluntarily placed themselves in position to receive and exercise, and having received and exercised, the benefits and rights of shareholders of the National Bank of Kentucky with respect to 37,721.6214 shares of the capital stock of said Bank, are estopped to deny their personal and proportionate liability to pay the assessment upon shareholders of said Bank as to the depositors and creditors thereof.

9. The use of the corporate entity of BancoKentucky Company by the holders of shares of its stock as an agency and instrumentality to hold the legal title to assessable Trustees' Participation Certificates representing the assessable stock of the National Bank of Kentucky and the

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legal title to the assessable capital stock of other banks and trust companies, and to own, operate and control a group or chain of state and national banks and trust companies for their use and benefit, without making provision for the protection of depositors and creditors of the National Bank of Kentucky in the event of an assessment upon its shareholders, and without providing BancoKentucky Company with substantial assets other than assessable bank shares or by BancoKentucky Company shareholders expressly assuming a proportionate personal liability to assessment, was and is constructively fraudulent as to the depositors and creditors of the National Bank of Kentucky. The holders of shares of BancoKentucky Company cannot shield themselves from personal liability to assessment as the actual, real, and beneficial shareholders of the National Bank of Kentucky by interposing the corporate entity of their agency and instrumentality, BancoKentucky Company, and declaring its shares to be non-assessable and their private property exempt from its debts.

10. BancoKentucky Company was created and conducted so that it in effect circumvented and violated state and federal laws based on sound public policy and designed for the protection of bank depositors and creditors. The shareholders of BancoKentucky Company are chargeable with knowledge of the use of this corporate entity to deny personal liability to assessment imposed by federal and state laws upon shareholders of national and state banks and trust companies, and its use to circumvent federal laws relating to branch banking, and state and federal laws providing for the supervision and regulation of the banking business. Said shareholders are chargeable with knowledge that said corporate entity was used to violate the laws of Kentucky with respect to the extent of the ownership of

Motion of Plaintiff for Findings of Fact

bank or trust company stock by one person or corporation and the laws of Kentucky which prohibit any corporation either directly or indirectly engaging in any way in the banking business unless organized under banking laws. The shareholders of BancoKentucky Company are not entitled to the immunity from personal liability of shareholders of lawfully organized and conducted business corporations and are proportionately liable for the indebtedness of BancoKentucky Company, as registered owner of Trustees' Participation Certificates.

**MOTION OF THE PLAINTIFF REQUESTING THE
COURT TO MAKE CERTAIN SPECIFIED FIND-
INGS OF FACT AND CONCLUSIONS OF LAW**

(Overruled in Open Court on June 5, 1940)

Now comes the plaintiff and respectfully moves the court as follows, to-wit:

1. To make each and all of the findings of fact and conclusions of law heretofore filed by the plaintiff and made a part of the record in this case in connection with the motion of the plaintiff for findings of fact and conclusions of law;
2. To make certain additional and supplemental findings of fact and conclusions of law in accordance with (a) the opinion of the court handed down May 13, 1938 (23 Fed. Sup. 265) overruling the motions to dismiss filed by the defendants, which proposed supplemental findings of fact and conclusions of law are hereto attached and marked Exhibit A; and (b) the opinion of this court handed down and filed in this cause on March 23, 1940, on the merits, which proposed supplemental findings of fact and conclusions of law are hereto attached and marked Exhibit B.

Motion of Plaintiff for Findings of Fact

EXHIBIT A

SUPPLEMENTAL CONCLUSIONS OF LAW REQUESTED BY PLAINTIFF IN CONFORMITY WITH OPINION ON MOTION TO DISMISS

1. The statute of limitations is not a defense. An action against shareholders for an assessment does not accrue until the assessment is due and payable, in this case, on April 1, 1931.

2. As to the alleged multifariousness of the bill—the very nature of this proceeding warrants the court in overruling the motion to dismiss on this ground. There can be no real prejudice to any defendant by proceeding in equity. The interest of the parties under the allegations of the bill are necessarily common in most respects. To dismiss the bill and require the receiver to sue each separate defendant at law would be to destroy the very essence of equity and be a gross injustice to all parties. It would involve years of litigation and expense over the determination of questions which must of necessity apply to each individual defendant. There is a community of interest between the defendants on all material questions of law and fact and equity can more efficiently, promptly, inexpensively, and practically attain the ends of justice. *A. M. Anderson, etc. v. Elizabeth Atkinson et al.*, 22 F. Supp. 853.

3. As to res judicata—in the case of *Laurent v. Anderson*, the same matters were not directly in question. We have for determination a question that has not been finally determined in any other proceeding. I am of the opinion that res judicata is not a good defense.

4. *Laurent v. Anderson* does not fall within the scope of estoppel by judgment. *Tait, Collector of Internal Revenue, v. Western Maryland Railway Co.*, 289 U. S. 620, and *Lyön v. Perin & G. Mfg. Co.*, 125 U. S. 698.

Motion of Plaintiff for Findings of Fact

5. The defense of election of remedies and persons is not sustained.

6. Counsel for defendants seek to distinguish the case at bar from *Barbour v. Thomas*, 86 F. (2d) 510. I cannot agree that simply by contracting for the statutory liability and so advertising there was anything added to the force of the statute. Neither do I agree that the statement in that opinion that "none of its stock was sold to the public nor issued to any persons other than the stockholders of the banks or their assignees" destroys it as an authority here.

7. Banco Kentucky was a record owner of ninety-five per cent of the shares of the National Bank of Kentucky. All of the stockholders of Banco profited from the dividends produced by the stock of the National Bank of Kentucky, and they should be charged with knowledge of the assets of a corporation (Banco) in whose stock they invested and from which assets they derived benefits.

EXHIBIT B

**SUPPLEMENTAL FINDINGS OF FACT AND LAW
SUGGESTED BY PLAINTIFF IN CONFORMITY
WITH OPINION**

1. This is a stock assessment suit.
2. The plaintiff is the Receiver of the National Bank of Kentucky, hereafter referred to as the Bank.
3. The defendants are stockholders in Banco Kentucky.
4. The officers and directors of the Bank, a national banking corporation, in conjunction with the officers and directors of the Louisville Trust Company, caused to be organized the Banco Kentucky Company as a Delaware corporation.
5. At the suggestion of and through information furnished them by the officers and directors of the Bank and

Motion of Plaintiff for Findings of Fact

Trust Company and the Trustees under the trust agreement of April 22, 1927, the stockholders of National Bank of Kentucky and the Louisville Trust Company ratified the formation of said Banco Kentucky Company by depositing their Trustees' Participation Certificates, which represented 95% of the stock of the National Bank of Kentucky and exchanged the same for the stock of the Banco Kentucky Company, receiving two shares of Banco stock, having a par value of \$10.00, for one Trustees' Participation Certificate, having a par value of \$10.00.

6. The National Bank of Kentucky was one of the largest and oldest banks in the South. Early in 1927 its capital, surplus and undivided profits were shown by its books to be \$6,800,000 represented by 25,000 shares of stock with a par value of \$100.00 per share.

7. In April of 1927, by an arrangement with the Louisville Trust Company under a unification plan, all of the stock of the Bank was transferred to six trustees. Shareholders were given in lieu thereof Trustees' Participation Certificates. The Bank, in November of the same year, entered into a unification agreement or reorganization plan with the Louisville National Bank & Trust Company, which finally resulted in a merger in 1929.

8. As early as October, 1927, the National Bank Examiner began to criticize certain large loans made by the Bank as sources "of potential danger of the bank," and suggested that diligent efforts be made to collect "these substandard assets."

9. The Comptroller of the Currency on December 12, 1927, addressed a letter to the Board of Directors of the Bank in which he stated the report of examination shows the Bank to be in a most unsatisfactory condition and seemed to be growing worse. He then pointed out many things which should be corrected and called attention to

Motion of Plaintiff for Findings of Fact

abnormal overdrafts and items of credit which were dangerous:

10. In the examination of the Bank in March, 1928, many of these criticisms were repeated and emphasized. In October of the same year the Chief National Bank Examiner in a report listed the more dangerous items and pointed out that there were overdrafts aggregating \$271,502.88, the largest amount of published overdrafts that had ever come to his attention. Overdue loans amounted to \$1,768,112.28. This item was much too large. Slow and doubtful loans over \$6,000,000 should receive vigorous attention. These and many other criticisms were directed to the attention of the Directors by the National Bank Examiners in the office of the Comptroller in reports and letters.

11. From February 11, 1927, when the merger of the Bank and Trust Company started, to May 25, 1929, the bank's deposits had shrunk from \$56,736,000 to \$35,089,000, a decrease of \$21,647,000 or 38 per cent.

12. The average daily borrowings went from \$3,830,018 during February, 1929, to \$12,546,262. The Bank was deficient in its legal reserves on 72 days from January 4, 1929, to July 15, 1929, in amounts up to \$1,972,385.

13. It was during this time, beginning in February, 1929, that Banco was conceived in the minds of the officers and directors of these unified banking houses. This proposed new corporation was discussed and organized throughout the months from February to September, 1929. It was incorporated under the laws of the State of Delaware on July 16, 1929.

14. On July 19, 1929, there was sent out to all holders of Trustees' Participation Certificates a letter which is Exhibit 24-3. This letter was signed by James B. Brown as President of the National Bank of Kentucky, Mr. Richard Bean, as President of the Louisville Trust Company, by

Motion of Plaintiff for Findings of Fact

the six Trustees and all of the Directors of the merged Bank and Trust Company.

15. Complying with the recommendation contained in this letter the stockholders of 95% of the stock of the Bank exchanged their T. P. Cs., representing the stock of the Bank, for the stock of Banco.

This was done by September 16, 1929.

16. The Directors of Banco were all directors of the Trust Company and of the Bank. The trustees were directors either in the Trust Company or the Bank, or both, and were also directors of Banco.

17. In statements and letters of the directors and officers of the Bank and the Trust Company, Banco was referred to as a holding company and the suggested preface to the prospectus which it was proposed to send to the shareholders recited that the officers and directors had been "considering a reorganization of your banking institutions . . . in which the first step to be taken by our shareholders in this reorganization is the creation of a third corporation."

18. It was provided in Banco's charter, "The private property of stockholders shall not be subject to the payment of corporate debts to any extent whatever."

19. After being launched in September, 1929, the Banco-Kentucky Company immediately proceeded to purchase stock in other banks.

20. On November 16, 1930, the directors of the Bank resolved to suspend the further operation of the Bank. The following day, November 17, 1930, the Comptroller appointed a receiver.

21. As a result of the closing of the Bank, Banco was placed in a precarious position which resulted in the filing of a petition on November 24, 1930, by six stockholders of Banco, individually and as executive committee of Banco

Motion of Plaintiff for Findings of Fact

against Banco praying that a receiver be appointed for Banco.

22. Banco entered its appearance and confessed the allegations of the petition and a receiver was appointed. The receiver of the Bank proceeded against the receiver of Banco for the amount of the assessment and secured a judgment.

CONCLUSIONS OF LAW

1. If the stockholders of Banco Kentucky Company are in reality stockholders of the Bank they are subject to the assessment in this case, regardless of an intermediate corporation.

2. Courts are slow to recognize any corporation that has apparently defeated the purpose of the statute. The general public is invited to deposit its money in banks and thus place it in the care of those charged with the affairs of the bank. But the law requires that a bank should be a bank and not a business house. Deposits are made and credit extended to banks with utmost confidence. The depositor and creditor know, either actually or with some general understanding that if those in charge of the affairs of the bank or those who profit as stockholders by reason of that deposit lose the depositor's money through credits or investments they are required to put back from their private estates a certain amount to cover, or at least partially cover, the loss.

3. Efforts have been made repeatedly to avoid the provisions of the double liability statutes. The courts have consistently upheld the statutes both in the letter and in the spirit. Stockholders cannot accept the benefits derived from bank stock on the one hand and avoid the statutory liability on the other. *Barbour v. Thomas*, 86 F. (2d) 510 (6 C. C. A.).

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4. The courts will lift the veil of a bank stock holding corporation and find the beneficial and true owners of the bank stock.

5. Stockholders who protest that they had no knowledge of any fraudulent purpose in the setting up of such a corporation will not be excused. *Metropolitan Holding Company v. Snyder*, 79 Fed. (2d) 263 (8 C. C. A.); *Fors v. Ferrell*, 271 Mich. 358.

6. The officers and directors of the Bank who suggested the formation of Banco were looking for an associate corporation of the Bank with unlimited charter powers through which they could express financial genius unknown hitherto in the Ohio Valley in an extension of the Bank's business.

7. The decision in the case of *Atherton v. Anderson*, 86 Fed. (2d) 518, is not res adjudicata of this case.

8. There were in fact interlocking directorates and Banco controlled the Bank, but this identity of stockholders and ownership of stock does not merge them into one corporation.

9. Banco's contract to purchase a half interest in Caldwell and Company was never consummated.

OPINION OF THE COURT

(Filed March 23, 1940)

This is a stock assessment suit. Section 64 National Banking Act (12 U. S. C. A. 64). The Plaintiff is the Receiver of the National Bank of Kentucky (hereafter referred to as The Bank). The defendants are stockholders in BancoKentucky (hereafter referred to as Banco).

The officers and directors of The Bank, a national banking corporation, in conjunction with the officers and directors of The Louisville Trust Company caused to be organized Banco, a Delaware corporation. At the sugges-

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of and through information furnished them by these same officers and directors the stockholders of The Bank exchanged 95% of the stock of The Bank for the stock of Banco.

The Plaintiff contends that Banco was organized as a holding company for the stock of The Bank and that its stockholders are in reality stockholders of The Bank and subject to double liability. The Defendants contend that Banco was not a holding company but an operating corporation organized to engage in extensive business enterprises and that while the buying and holding of bank stock was to be one of its functions that was only incidental. In order for the plaintiff to recover he must sustain the burden of proof. *Schlener v. Davis*, 75 F. (2d) 371 (5 C. C. A.).

The proof must establish that Banco was a holding company for the bank stock of The National Bank of Kentucky. Whether it was such a holding company by reason of a fraudulent design to avoid a stock assessment or was organized with the purest of motives is of no consequence. The question is was it a holding company for this particular bank stock.

The record discloses a great mass of evidence, both oral and documentary. It is neither practical nor necessary to review all of it in this opinion.

The National Bank of Kentucky was one of the largest and oldest banks in the South. Early in 1927 its capital, surplus and undivided profits were \$6,800,000.00, represented by 25,000 shares of stock of the par value of \$100.00 per share.

In April of 1927 by an arrangement with the Louisville Trust Company (hereafter referred to as the Trust Company) under a unification plan all of the stock of The Bank was transferred to six trustees. Shareholders were

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given in lien thereof Trustees' Participation Certificates (T. P. Cs.). The Bank, in November of the same year, also entered into a unification agreement or reorganization plan with the Louisville National Bank and Trust Company, which finally resulted in a merger in January, 1929.

As early as October, 1927, the National Bank examiner began to criticize certain large loans made by The Bank as sources "of potential danger to the bank," and suggested that diligent effort be made to collect what he termed "these substandard assets."

The Comptroller of the Currency on December 12, 1927, addressed a letter to the Board of Directors of The Bank in which he said the report of examination shows The Bank to be in a "most unsatisfactory condition" and seemed to "be growing worse." He then pointed out many things that should be corrected and called attention to "abnormal" over-drafts and items of credit which were termed "dangerous."

In the examination of The Bank in March, 1928, many of these criticisms were repeated and emphasized. In October of the same year the Chief National Bank Examiner in a report listed the more dangerous items and pointed out that there were overdrafts aggregating \$271,502.88, "the largest amount of published overdrafts" that had ever come to his attention. That overdue loans amounted to \$1,768,112.28, and that this item was "much too large." Slow and doubtful loans of over six million dollars should receive "vigorous attention." These and many other criticisms were directed to the attention of the directors by the National Bank Examiners and the office of the Comptroller in reports and letters.

Evidence is produced to show that from February 11, 1927, when the merger of The Bank and Trust Company started, to May 25, 1929, the bank's deposits had shrunk

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from \$56,736,000.00 to \$35,089,000.00, a decrease of \$21,647,000.00, or 38 per cent.

The average daily borrowings went from \$3,830,018 during February, 1929, to \$12,546,262. The Bank was deficient in its legal reserves on 72 days from January 4, 1929, to July 15, 1929, in amounts up to \$1,972,385.

It was during this time beginning in February, 1929, that Banco was conceived in the minds of the officers and directors of these unified banking houses. This proposed new corporation was discussed and organized throughout the months from February to September, 1929. It was incorporated under the laws of the State of Delaware on July 16, 1929.

On July 19, 1929, there was sent out to all holders of Trustees' Participation Certificates a letter advising them of the formation, incorporation and avowed purposes of Banco. This letter was signed by Mr. James B. Brown, as President of The National Bank of Kentucky, Mr. Richard Bean, as President of The Louisville Trust Company, by the six Trustees and by the directors of the merged Bank and Trust Company.

I quote this letter in full as I feel it is important to an understanding of this opinion:

This letter is as follows:

"To the Holders of Trustees' Participation Shares,
National Bank of Kentucky and The Louisville
Trust Company:

"1. Your Officers and Directors have studied the rapidly changing conditions in the banking business in America, with a view to preparing the two banking institutions under their management, to meet these changed conditions, and to take early advantage of new opportunities presented thereby.

"2. The conclusion unanimously reached, as a result of their deliberations, is that the two banks, and the

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business conducted by them, should be reorganized by adding to this group a third corporation, which will make the operations of these banking institutions more profitable, expand their facilities, and thus develop for the entire group new and profitable financial opportunities and connections.

"3. Such a reorganization is in line with the trend of business and finances in this country; and the strength and influence of the new corporation will not only greatly benefit the two banks and the territory they now serve, but will also be a stabilizing influence in banking circles throughout this section of the country. The new corporation can exercise many profitable and important functions which neither a bank nor a trust company has authority to exercise, and can take advantage of many sound and profitable financial opportunities, frequently presented in the course of business of the two banks, but not available to them, because of the restrictions upon their powers and activities.

"4. The following is the Plan of Reorganization agreed upon by the Officers and Directors of the two banks, and approved by formal Resolutions of the Trustees, under the Trustees' Agreement for the National Bank of Kentucky and The Louisville Trust Company.

"5. There has been organized under the laws of the State of Delaware, a corporation known as The Banco-Kentucky Company, with an authorized capital of 2,000,000 shares, having a par value of Ten (\$10.00) Dollars each. The stock will be exchanged or sold, in accordance with this Plan, on the basis of Twenty-five (\$25.00) Dollars per share, which will give the Company a capital of Twenty Million (\$20,000,000.00) Dollars, and a surplus of Thirty Million (\$30,000,000.00) Dollars, or a total capital and surplus of Fifty Million (\$50,000,000.00) Dollars. No stock will be sold by the Company at less than Twenty-five (\$25.00) Dollars per share.

"6. The corporation is given broad charter powers, including the right to acquire stocks, bonds and other

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securities of other corporations, and evidences of indebtedness created or issued by other corporations; the power to underwrite securities and take part in syndicate management, and to charge fees and commissions for its services in connection with the reorganization of financing of other corporations; the power to issue bonds and to guarantee the obligations of others and to become surety, guarantor and endorser thereof. The foregoing is merely a brief summary of the broad powers given the corporation; complete details of these powers appear in the Certificate of Incorporation of the Company, copies of which may be examined at the offices of the two banks by any one interested.

"7. It is an essential part of this reorganization that the shares of this corporation (or at least a substantial majority thereof) be owned by the Trustees' Participation Shareholders, and that it be managed and operated by the Boards of Directors and the officers of the two banks. The BancoKentucky Company, therefore, offers to the Trustees' Participation Shareholders of the National Bank of Kentucky and The Louisville Trust Company, through the Trustees as agents in the transaction, its entire capital stock, on the bases and subject to the terms and conditions hereinafter set out;

"8. It is an essential part of this Plan that:

"(a) On or before September 19, 1929, the holders of the Trustees' Participation Shares must deposit their certificates with the Trustees for exchange into the shares of The BancoKentucky Company; and for each Participation Share thus deposited, the Trustees will cause to be issued to the holder thereof, Two (2) shares of the stock of the new corporation. In addition thereto the depositing shareholder will have the right to subscribe for as many additional shares of the stock of The BancoKentucky Company as he may desire at the price of Twenty-five (\$25.00) Dollars per share subject to allotment ratably if oversubscribed. Trustees' Participation Shareholders who fail to deposit their

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shares on or before September 19, 1929, will be deemed to have waived their rights to thus exchange their shares and subscribe for stock in the new Company, unless the Trustees shall extend the time for deposit and subscription (as they may do in their discretion), in which event the Trustees' Participation Shareholders will be deemed to have waived their rights, unless their shares are deposited within the extended time.

"(b) The entire Plan of Reorganization, and the deposit and subscription privileges and rights hereinabove set out, are all, and each of them is conditioned expressly upon the acquisition by the Trustees' Participation Shareholders, either by deposit for exchange, or by direct subscription as above, of at least a majority of the shares of The BancoKentucky Company; and further conditioned upon the acquisition by The BancoKentucky Company of at least a majority of the Trustees' Participation Shares issued and outstanding as of September 19, 1929.

"9. It is the unanimous recommendation of your Officers, Directors and Trustees of the National Bank of Kentucky and The Louisville Trust Company, that the Trustees' Participation shareholders immediately deposit their shares under this Reorganization Plan, and that they exercise their right to subscribe to the additional shares of stock of the BancoKentucky Company.

"10. There is enclosed herewith a subscription from covering this transaction, which you are asked to sign at your earliest opportunity and deposit with the Trustees, at their office, 421 West Market Street, together with your Certificate or Certificates for Trustees' Participation Shares, endorsed in blank and witnessed. There will be issued to you an Interim Receipt for the shares deposited which, when the Plan has become effective as above set forth, may be presented for exchange for the permanent certificates of the BancoKentucky Company, in accordance with the Plan of Reorganization."

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Complying with the recommendation contained in this letter the stockholders of 95% of the stock of the Bank exchanged their T. P. Cs., representing the stock of the Bank, for the stock of Banco.

This was done by September 16, 1929, and on September 19, 1929, Banco was launched for business.

The directors of Banco were all directors of the Trust Company and of the Bank. The trustees were directors either in the Trust Company or the Bank, or both, and were also directors of Banco.

It is further pointed out that in statements and letters of the directors and officers of the Bank and the Trust Company, Banco was referred to as a holding company and the suggested preface to the prospectus which it was proposed to send to the shareholders recited that the officers and directors had been "considering a reorganization of your banking institutions . . . in which the first step to be taken by our shareholders in this reorganization is the creation of a third corporation."

It was provided in Banco's charter, "The private property of stockholders shall not be subject to the payment of corporate debts to any extent whatever."

It is not contended by the plaintiff that the Bank was insolvent in any sense of the word when Banco was organized or the holders of T. P. Cs. exchanged them for stock of Banco with knowledge of the impending failure of the Bank or that they actually knew of the condition of the Bank in 1929. But, that the officers and directors of the Bank, organizers of Banco, did know that it was in a failing condition and that T. P. C. holders are chargeable with constructive knowledge.

In his report of October 27, 1928, just before Banco was first discussed in February, 1929, National Bank Examiner, John S. Wood, estimated losses in the Bank as of that time

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at \$115,761. This amount was charged off during the examination leaving in the Bank its capital of \$4,000,000.00, surplus of \$2,000,000.00, and undivided profits and reserves of \$771,010.00.

The regular quarterly dividend of \$160,000.00 had been declared through May, 1929, without criticism of the bank examiner.

Banco secured from T. P. C. holders and the stock buying public \$10,000,000.00 for 400,000 shares of stock, and after being launched in September, 1929, immediately proceeded to purchase stock in other banks. It also bought a small amount of insurance stock.

In January, 1920, it increased its capital to \$50,000,000.00. This was made necessary partially by a sale of 250,000 shares to one customer.

In May, 1930, Banco entered into a contract with Caldwell and Company for a half interest in that company. Caldwell and Company was generally known to be the largest investment and securities house in the South and its financial soundness was unquestioned. The Secretary of Caldwell and Company testified that it did a gross business in 1929 of \$75,000,000.00, and of \$37,000,000.00 in the first five months of 1930.

Banco had its own capital and cash resources much larger than the capital and total resources of the Bank. Six hundred and forty-six T. P. C. holders bought Banco stock. The total amount of certificates owned by this number of shareholders was 143,762 of the par value of \$10.00 per share. The same individuals purchased or subscribed for an additional 178,878 shares of Banco stock at a price of \$25.00 per share. The directors, who were the organizers of Banco, had a total of 76,115 T. P. Cs. of the par value of \$10.00 per share. They subscribed for 47,188 shares of Banco at \$25.00 per share.

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On November 16, 1930, the directors of the Bank resolved to suspend the further operation of the Bank. The following day, November 17, 1930, the comptroller appointed a receiver.

As a result of the closing of the Bank, Banco was placed in a precarious position which resulted in the filing of a petition on November 24, 1930, by six stockholders of Banco, individually and as executive committee of Banco against Banco praying that a receiver be appointed for Banco.

Banco entered its appearance and confessed the allegations of the petition and a receiver was appointed. The receiver of the Bank proceeded against the receiver of Banco for the amount of the assessment and secured a judgment.

The record further contains evidence of the following facts urged by the defendants as positive proof that Banco was not merely a holding company but was an operating business corporation and that owning the stock of the Bank was only incidental to its avowed and actual purposes and functions.

That at all times prior to the formation of Banco and during the months it was under discussion that the Bank was in such a sound financial condition that future insolvency of the Bank never occurred to anyone connected with it. That the capital and surplus were intact and in addition it had undivided profits of never less than \$234,000.00.

That the report of National Bank Examiner Wood of May 25, 1929, which is strongly urged upon the attention of the Court by the plaintiff, was not reported to the Board of Directors until August 23, 1929.

That there was a general belief that the locality needed a business house such as the proposed Banco to do a so-called general investment banking business, to underwrite

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and float bond and stock issues, and to carry on many legitimate business enterprises to make money but which were prohibited to the banks.

I have in this statement of facts undertaken to give many of the important features of the evidence on which each side relies to sustain its case. I have not undertaken to set out all of the facts or all of the important facts. The record is so voluminous and there are so many details from which inferences have been drawn in briefs that it would be entirely impracticable to state all of them. Much of the evidence is wholly irrelevant and immaterial to the issues presented.

The liability of the defendants is entirely statutory. They must be stockholders in the Bank. If they are stockholders in reality, regardless of an intermediate corporation, they are subject to the assessment. They are not stockholders in the Bank if Banco was an operating company and not merely a holding company.

Courts are slow to recognize any corporation that has apparently defeated the purposes of the statute. The general public is invited to deposit its money in banks and thus place it in the care of those charged with the affairs of the bank. But the law requires that a bank should be a bank and not a business house. Deposits are made and credit extended to banks with utmost confidence. The depositor and creditor know, either actually or with some general understanding that if those in charge of the affairs of the bank or those who profit as stockholders by reason of that deposit lost the money through credits or investments they are required to put back from their private estates a certain amount to cover or at least partially cover the loss.

Efforts have been made repeatedly to avoid the provisions of the "double liability" statutes. The Courts have

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consistently upheld the statutes both in the letter and in the spirit. Stockholders cannot accept the benefits derived from bank stock on the one hand and avoid the statutory liability on the other. *Barbour v. Thomas*, 86 F. (2d) 510 (6 C. C. A.).

The courts will lift the corporate veil of a sham corporation and find the beneficial and true owners of the bank stock. *Laurent v. Anderson*, 70 F. (2d) 819 (6 C. C. A.); *Pauly v. State Loan & Trust Co.*, 165 U. S. 606; *Early v. Richardson*, 280 U. S. 496; *Nettles v. Rhett*, 94 F. (2d) 42; *Ohio National Bank v. Hulitt*, 204 U. S. 162; *Christopher v. Norvell*, 201 U. S. 216, 5 Am. Cas. 740; *O'Keefe v. Pearson*, 73 F. (2d) 673 (1 C. C. A.); *Corker v. Soper*, 53 F. (2d) 190 (5 C. C. A.).

Stockholders who protest that they had no knowledge of any fraudulent purpose in the setting up of the corporate shell have not been excused. *Metropolitan Holding Company v. Snyder*, 79 F. (2d) 263, 103 A. L. R. 912 (8 C. C. A.); *Fors v. Farrell*, 271 Mich. 358, 260 N. W. 886.

Each case must, of course, rest on its own facts. I do not believe that the proof in the case at bar brings it within the rule. On the contrary I am of the opinion that Banco was established for its avowed purposes, with no thought, on the part of any of its organizers, of avoiding double liability on their bank stock.

The Court takes cognizance of the fact that at the time of the organization this country was probably in the highest state of credit inflation it has experienced. I do not think that the officers of the bank who suggested the formation of Banco entertained any suspicion that the Bank would ever fail. They were not looking for a holding company for the stock of the Bank, but for an associate corporation of the Bank with unlimited charter powers through which they could express financial genius hitherto unknown

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in the Ohio Valley. They were suffering not so much from fear of impending disaster, but from a Napoleonic complex not uncommon to the times.

The stockholders and directors obligated themselves to pay more for the new issues of stock than their liability would have been on the stock of the Bank they held. The holders of T. P. Cs. had at the time Banco was formed a potential assessment liability of \$1,437,620.00 in the event both the Bank and Trust Company failed. Their obligation for new stock purchased in addition to that exchanged was \$4,471,950.00. The directors' greatest potential assessment on the T. P. Cs. held was \$761,150. The directors purchased new stock in Banco for \$1,179,750. They thus actually paid out or were obligated to pay more than their full assessment could have been.

I do not believe the decision in the case of *Atherton v. Anderson*, 86 F. (2d) 518, is res judicata of this case but it is certainly strong authority for the proposition that Banco was in reality what its sponsors claimed it to be in their letter of July 19, 1929. *Kentucky Coal Lands Co. v. Mineral Development Co.*, 219 Fed. 45 (6 C. C. A.).

I quote certain language of the opinion in the *Atherton* case which I consider very appropriate:

"We come then to the question whether the relation between the bank and the Banco Kentucky Company was such that a court of equity would be warranted in disregarding the existence of Banco as a separate corporate entity. It is true that Banco was conceived in the vaulting imagination of the president of the bank; that it was promoted and fostered by the appellants; that the directorates of the two corporations, though not identical, overlapped; that the great majority of trust participation certificates representing stock in the bank became the property of Banco, and that there is a suggestion of identity in the name adopted for the

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new company. But Banco was not a mere holding company for the bank's stock. It was organized for clearly defined purposes, too optimistically conceived, perhaps, but neither illegitimate nor unlawful. It had its own capital with resources at one period almost twice the entire capital and surplus of the bank. While in the very beginning the bank stock may, as found by the court, have been its principal asset, and may have continued thereafter to be its most valuable single asset, it had other assets of very substantial value, and it was warrantable inference at the time of its organization and for a substantial period thereafter that it could well meet any assessment that might be levied upon it as a stockholder of the bank. At any rate there is nothing in the record to point to its creation for the purpose of escaping such assessment. Indeed when the assessment was finally made by the Comptroller it was enforced against Banco and not against the stockholders. See *Laurent v. Anderson*, supra. Its separate corporate existence was recognized by the very receiver on whose behalf we are now asked to ignore it."

The facts do not establish that Banco was an empty shell, but a very real entity actively acquiring capital assets. To hold otherwise is to deny an established fact. *Laurent v. Anderson*, 70 F. (2d) 819.

There were in fact interlocking directorates and Banco controlled the Bank, but this identity of stockholders and ownership of stock does not merge them into one corporation. *Pittsburgh & Buffalo Co. v. Duncan*, 232 Fed. 584 (6 C. C. A.); *Kentucky Electric Power Co. v. Norton Coal Mining Co.*, 93 F. (2d) 923.

Although never consummated, Banco's contract to purchase a half interest in Caldwell and Company was a step toward carrying out its avowed purposes.

A review of the record is convincing that while there were irregularities in the handling of some of the credit

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accounts and some of these accounts had become much too large the soundness of the Bank and its ability to meet its obligations could not be questioned until long after the formation of Banco.

Courts should not lose sight of the fact that many things which occurred in the late twenties may appear now to be both careless and corrupt. Many small men were pushed into positions of great power. Many men of character and ability were lulled into a false sense of security.

In the financial world apparently everything succeeded. Success was measured in terms of bigness and mass production. Unfortunately banks which we had learned to think of as safe investments for stockholders and security for savings in many instances led the parade in speculating with the funds entrusted to them.

The crash of October, 1929, was inevitable, but unexpected. We must realize that after all many institutions that failed would have been heralded as great successes for a few years at least had they been started in 1926 or 1927. Take for example the complex financial structure built up as Caldwell and Company. I am inclined to believe that Banco-Kentucky would have had a brilliant career of a few months if it had been launched in 1927 instead of 1929.

I do not mean that the courts should modify their judgment or depart from time honored principles of equity by constantly referring to the distinction between the fanciful prosperity of the late twenties and the grim realities of the early thirties.

We have used the "depression" as an excuse for too many things already. It should, however, be borne in mind in considering the motives in the minds of the organizers of Banco at the time it was discussed and finally chartered.

Interlocking directorates may not contribute to the free competition so necessary to the health and well being of

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the body politic, but they were not unlawful. It may not have been good business to organize Banco and purchase its stock with T. P. Cs., but there was nothing in the law that prohibited it. A corporation could buy bank stock, either with money or by an exchange of stock. *Citizens Bank of Shelbyville v. Mutual Trust Co.*, 206 Ky. 86.

It is my opinion that Banco was not merely a holding company, but was formed for the purposes set out in the letter of July 19, 1929, and for no other purpose. That it was not formed as a medium or agency through which to avoid double liability on the stock of the Bank. The stockholders of Banco are not stockholders of the Bank within the meaning of the Statute.

The plaintiff's bill should be dismissed. Counsel will submit findings of fact, conclusions of law and judgment in accordance with this opinion.

MAC SWINFORD.

March 23, 1940.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ENTERED JUNE 29, 1940**

(Filed June 29, 1940)

1. The National Bank of Kentucky was, at all times mentioned in the Bill of Complaint, a national bank; The Louisville Trust Company was a State Bank and Trust Company organized under the laws of Kentucky. These corporations will be referred to as the Bank and the Trust Company, respectively.

2. The Banco Kentucky Company was a corporation organized under the General Corporation Law of the State of Delaware and will be referred to as Banco.

3. The Trust Agreement was entered into as of April 22, 1927. In order that the Bank might have \$4,000,000.00 out-

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standing capital as of April 22, 1927, by resolution of its directors, and on approval of the Comptroller, it declared and paid a stock dividend of 60%, increasing its original capital from \$2,500,000.00 to \$4,000,000.00.

4. All of the stock of the Bank as well as all of the stock of the Trust Company, except five shares, were transferred to the Trustees under the trust aforesaid, of record, except qualifying shares of the directors of both institutions, and the directors of the Trust Company were elected as Directors of the Bank. Also, the Directors of the Bank were elected as directors of the Trust Company, immediately following the execution of the trust, and pursuant to its terms.

5. The directors of both institutions at that time, deposited their qualifying shares with the Trustees, upon an agreement in writing that these shares would be surrendered to the directors on demand, and these qualifying shares remained with the Trustees under the above agreement until the close of the Bank. Each director signed an agreement with the Trustees that upon his death, insolvency, attachment, or upon ceasing to be a director in either of the institutions, they or their heirs, assigns or personal representatives, would transfer their shares to the Trustees, and receive therefor Trustees' Participating Certificates. The directors regularly received the dividends on their shares from that time forward and during their terms of office. For each share of stock deposited with the Trustees of either the Bank or the Trust Company, they issued what is known in the record as Trustees' Participating Certificates or Receipts, par for par, and subsequently the Trustees reduced the par value of these Trustees' Participating Receipts from \$100.00 per share to \$10.00 per share. The Trustees' Participating Receipts will be hereinafter referred to as T. P. C.'s.

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6. The Bank was one of the largest and oldest banks in the South. Early in 1927, its capital, surplus and undivided profits were \$6,800,000.00, represented by 25,000 shares of stock of the par value of \$100.00 per share.

7. In January, 1929, a consolidation was entered into between the Trust Company and the Louisville National Bank, another bank in Louisville, under the terms of which the Trust Company increased its capital from \$1,000,000.00, divided into 10,000 shares, to \$1,750,000.00, divided into 17,500 shares, and issued to the Trustees the increase of 7,500 shares, who, in turn, issued T. P. C.'s, against the same, which were delivered to the stockholders of the Louisville National Bank aforesaid, for this stock, and as a part of the merger, the directors of the Louisville National Bank were elected to the board of the Trust Company, and elected to the board of Banco, but were never elected to the board of the Bank.

8. Beginning as of July 1, 1927, and thereafter during the entire period from that time to November 16, 1930, the Bank and Trust Company regularly declared and paid dividends at the rate of \$4.00 per share quarterly. The Trustees received these dividends, except on the qualifying shares of Directors, and made distribution thereof to the T. P. C. holders.

9. In 1927 and thereafter, the National Bank Examiners, in their reports, and the Comptroller of the Currency, in his letters addressed to the board, criticized certain large loans and overdrafts made by the Bank as sources of potential danger to the Bank, and made various suggestions as to, what was termed as, "substandard assets." The Bank was deficient in its legal reserves on seventy-two days, from January 4, 1929, to July 15, 1929, in amounts up to \$172,358.00. During the period from May 25, 1929,

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to the date of the close of the Bank, its deposits varied in accordance with the following amounts:

	1927	1928	1929	1930
February 11,	56,741,470.31	47,261,239.08 (10)	45,821,333.86	43,507,978.86
March 11,	51,888,778.07	44,189,325.93 (10)	43,726,810.71	40,268,997.43
April 11,	50,777,172.35	44,650,366.22	38,016,688.75	36,822,560.13 (12)
May 11,	51,164,355.18	42,323,744.22	36,624,369.67	36,929,297.02
June 11,	46,963,658.24	40,934,376.12	36,375,579.19	34,850,605.94
July 11,	45,115,620.20	40,942,412.73 (10)	34,915,232.93 (10)	35,953,029.09 (12)
August 11,	46,929,580.60 (12)	38,799,544.76	34,481,395.39	35,162,070.75
September 11,	48,898,923.35	39,774,825.90	38,148,064.58	40,969,642.91
October 11,	46,716,416.59 (10)	41,150,315.14 (10)	43,488,919.79 (12)	35,703,208.17 (12)
November 11,	44,915,437.15	38,554,234.17	39,862,806.11	32,178,276.45
November 17,		37,698,845.82	38,332,650.10	27,028,157.66

(The above figures were taken from plaintiff's exhibit 12.)

10. Beginning in February, 1929, the officers and directors of the Bank and Trust Company, along with the Trustees under the unification plan, discussed and later organized the Banco Kentucky Company, hereinafter referred to as Banco. It was organized under the laws of the State of Delaware on July 16, 1929.

11. The charter of Banco provided for the issues of 2,000,000 shares of its common capital stock of the par value of \$10.00 each, and the scope of its business, under its charter, was:

"The acquiring by purchase or otherwise of all or any portion of the capital stock, property, assets and franchises of any or all corporations transacting business in any State of the United States; the purchasing, holding, selling, assigning, transferring, mortgaging, pledging or otherwise disposing of shares of the capital stock or any bonds, securities or evidence of indebtedness created by or issued by any other corporation or corporations organized under the laws of any State

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of the United States or of any foreign country and while the owner thereof to exercise all the rights, powers and privileges of ownership; the purchasing or otherwise acquiring of any promissory notes or other evidences of indebtedness executed by any person, firm, association or corporation; the financing, managing or operating of any commercial or manufacturing business or enterprise; the underwriting of any issue of stocks, bonds, debentures or other securities issued by any corporation; the charging of fees or commissions for any or all services rendered or advice or assistance given to any person, firm, association or corporation; acquiring and paying for in cash, stock or bonds, of this corporation or otherwise, the good will, rights, assets and property of any person, firm, association or corporation and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm or corporation.

"The corporation shall have power to act as registrar or transfer agent for any other association or corporation and to act as agent in general for any other person, firm, association or corporation.

"The corporation shall have full power to issue bonds, debentures, or obligations of this corporation from time to time, for any of the objects or purposes of the corporation and to secure the same by mortgage, pledge, deed of trust or otherwise. The corporation shall have full power to purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such would cause any impairment of its capital; and provided, further, that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

"The corporation shall have full power to guarantee the obligations of any other person, firm, association or corporation and to become surety therefor and to become joint maker, endorser or acceptor of any such obligations and to charge fees and commissions for such services.

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"The corporation shall have full power without restriction or limit as to amount to purchase or otherwise acquire, hold, own, mortgage, sell, convey or otherwise dispose of real and personal property of every class and description in any of the States of the United States, or any foreign country, subject to the laws of such States or foreign countries.

"In general, the corporation shall have full power to carry on any other business in connection with the foregoing whether commercial, manufacturing, financial or otherwise, and to have and exercise all the powers conferred by the laws of Delaware upon corporations formed under the act hereinafter referred to and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

"The foregoing clauses shall be construed both as objects and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation."

15. Section VIII of Banco's charter provided:

"The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatsoever."

12. After a prospectus of Banco had been prepared, and on July 5, 1929, following a meeting of the Board of Directors of the Bank, James B. Brown, President of the Bank, requested of Robert F. Vaughan, member of the Board of the Trust Company and an attorney, an opinion as to whether there would be a taxable gain upon the exchange of Banco shares (it having been agreed that Banco would issue two of its shares for one T. P. C.).

13. On July 6, 1929, Vaughan addressed a letter to James B. Brown, President of the Bank, in which he called attention to certain provisions of the Federal Revenue Act and then said:

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"(2) We believe that the BancoKentucky Company will be treated as a reorganization, provided it acquires not less than a majority of the Trustees' Participating Shares. A reorganization is defined in the Revenue Act as a merger or consolidation, including the acquisition by one corporation of at least a majority of the voting stock of another corporation. For the purposes of our transaction, it is our opinion that the Trustees for the National Bank of Kentucky and The Louisville Trust Company will be treated as an Association or corporation. This opinion is based upon two facts:

"a. Because the Rules and Regulations Section of the Income Tax Unit have held that Trustees, under similar trust agreements, are to be treated as an association or corporation for income tax purposes; and

"b. Because under Section 701 of the Revenue Act of 1918, the term, corporation, is defined to include "association."

"Assuming that we are right in the foregoing conclusions, then, no taxable gain will be realized as a result of the exchange of the shares, under Subsection 3 of Section 112, Revenue Act of 1928, which reads as follows:

"No gain or loss shall be recognized if stock or securities in a corporation, a party to a reorganization, are in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation, or, in another corporation, a party to the reorganization."

"Of course, the foregoing section would apply only in the event the department should treat the Trustees, for the National Bank of Kentucky and The Louisville Trust Company, as a corporation, for, in that event, the Trustees would be a 'party to the reorganization' within the meaning of the above section, and the BancoKentucky Company would be the other party

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thereto. It is our best opinion, as above stated, that the Trustees would be so treated by the department, and, therefore, that no taxable gain would result from these transfers.

"In order to clinch our right, as far as possible, to claim for our stockholders the immunity provided for in the above section, we believe it will be necessary to add a clause to the prospectus, providing that, the offer of the Banco Kentucky Company stock on the plan outlined is conditional upon the acceptance thereof by at least a majority in interest of the Trustees' Participation Shareholders."

14. Before the opinion of Vaughan was written to Brown, a prospectus of Banco had been prepared, and did not contain any reference therein to the word "reorganization," nor did it provide for the necessity of securing a majority of the T. P. C.'s.

15. The Trustees under the Trust Agreement aforesaid, and following the opinion of Robert F. Vaughan aforesaid, employed Miller & Chevalier as attorneys in fact "for the purpose of obtaining a ruling as to whether the trust, created by said Trust Agreement, is an 'association' within the meaning of the Revenue Act of 1928, as applied to the provisions relating to stamp tax and income tax levied under the acts with powers of revocation and substitution."

16. An information ruling was obtained from the Revenue Department, and was reported to the Trustees as follows:

"The gentleman gave as his opinion (without opportunity to study the history of the entire transaction) that it was highly important that every preliminary paper, resolution, etc., dealing with this company and its reorganization, should clearly recite that the Company is a 'reorganization' within the purview of the Revenue Act of 1928.

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"In other words, the issue and delivery of two shares of stock of the Company, for one Trustees' Participating Share, must be made to appear (so far as the Bank's stockholders are concerned) as a mere receipt of the same property in another form, and not as a closed transaction wherein they part with one species of property in exchange for an entirely different species of property.

"I believe we can accomplish this result, without in any wise impairing the structure of the set-up already agreed upon, by prefacing the prospectus with some general remarks, as per the enclosed draft herewith submitted for your criticism."

17. Mr. Vaughan then drew a preface to the suggested prospectus, conforming with the foregoing opinions as to the provisions of the income tax law.

18. The prospectus of the company was then rewritten in the form of a letter to the T. P. C. holders, dated July 19, 1929, which letter was as follows:

OFFICE OF TRUSTEES

Louisville, Ky.

July 19, 1929.

Reorganization Plan

for

National Bank of Kentucky and The

Louisville Trust Company

In connection with

The Banco Kentucky Company.

"To the Holders of Trustees' Participation Shares,
National Bank of Kentucky and The Louisville
Trust Company:

"Your officers and directors have been studying the rapidly changing conditions in the banking business in America, with a view of preparing the two banking institutions under their management to meet these

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changed conditions, and to take early advantage of new opportunities presented thereby.

"The conclusion unanimously reached as a result of these deliberations, is that the two banks and the business conducted by them, should be reorganized by adding to this group a third corporation, which will make the assets of these banking institutions more profitable, expand their facilities, and thus develop for the entire group new and profitable financial opportunities and connections.

"Such a reorganization is in line with the trend of business and finance in this country; and there can be little doubt that the assets of the new corporation will not only greatly benefit the two banks and the territory they now serve, but will also be a stabilizing influence in banking circles throughout this section of the country. The new corporation can exercise many profitable and important functions which neither a bank nor a trust company has authority to exercise; and can take advantage of many sound and profitable financial opportunities frequently presented in the course of business of the two banks, but not available to them because of the restrictions upon their power and activities.

"The following is the Plan of reorganization agreed upon by the officers and directors of the two banks, and approved by formal Resolution of the trustees, under the Trustees' Agreement for the National Bank of Kentucky and The Louisville Trust Company.

"1. There has been organized under the laws of the State of Delaware a corporation known as the Banco-Kentucky Company with an authorized capital of 2,000,000 shares, having a par value of ten (\$10.00) dollars each. The stock will be exchanged or sold in accordance with this Plan on the basis of twenty-five (\$25.00) dollars per share, which will give the Company a capital of twenty million (\$20,000,000.00) dollars, and a surplus of thirty million (\$30,000,000.00) dollars, or a total capital and surplus of fifty million (\$50,000,000.00) dollars. No stock will be sold by the

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company at less than twenty-five (\$25.00) dollars per share.

"2. The corporation is given broad charter powers, including the right to acquire stocks, bonds and other securities of other corporations and evidences of indebtedness created or issued by other corporations; the power to underwrite securities and take part in syndicate management and to charge fees and commissions for its services in connection with the reorganization or refinancing of other corporations; the power to issue bonds and to guarantee the obligations of others and to become surety, guarantor and endorser thereof. The foregoing is merely a brief summary of the broad powers given the corporation; complete details of these powers appear in the Certificate of Incorporation of the Company, copies of which may be examined at the offices of the two banks by any one interested.

"3. It is an essential part of this reorganization that the shares of this Corporation (or at least a substantial majority thereof) be owned by the Trustees' Participating Shareholders, and that it be managed and operated by the Boards of Directors and the Officers of the two banks. The BancoKentucky Company, therefore, offers to the Trustees' Participating Shareholders of the National Bank of Kentucky and The Louisville Trust Company through the trustees as Agents in the transaction, its entire capital stock on the basis and subject to the terms and conditions hereinafter set out;

"It is an essential part of this Plan that:

"(a) On or before September 19, 1929, the holders of the Trustees' Participating Shares must deposit their certificates with the Trustees for exchange into the shares of the BancoKentucky Company; and for each Participating Share thus deposited, the Trustees will cause to be issued to the holder thereof, two (2) shares of the stock of the new corporation. In addition thereto, the depositing shareholder will have the right to subscribe for as many additional shares of the stock of the BancoKentucky Company as he may desire

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at the price of Twenty-five (\$25.00) Dollars per share, subject to allotment ratably if over-subscribed. Trustees' Participating Shareholders who fail to deposit their shares on or before September 19, 1929, will be deemed to have forfeited their rights to thus exchange their shares and subscribe for stock in the new company, unless the trustees shall extend the time for deposit and subscription (as they may do in their discretion), in which event the Trustees' Participating Shareholders will be deemed to have waived their rights, unless their shares are deposited within the extended time.

"(b) The entire Plan of Reorganization and the deposit and subscription privileges and rights hereinabove set out are all, and each of them, is conditioned expressly upon the acquisition by the Trustees' Participating Shareholders either by deposit for exchange, or by direct subscription as above, of at least a majority of the shares of the BancoKentucky Company, and further conditioned upon the acquisition by the BancoKentucky Company of at least a majority of the Trustees' Participating Shares issued and outstanding as of September 19, 1929.

"4. It is the unanimous recommendation of the Officers, Directors and Trustees of the National Bank of Kentucky and The Louisville Trust Company, that the Trustees' Participation Shareholders immediately exchange their shares under this Reorganization Plan and that they exercise their right to subscribe to the additional shares of stock of the BancoKentucky Company.

"There is enclosed herewith a subscription form covering this transaction, which you are asked to sign at your earliest opportunity and deposit with the Trustees at their office, 421 West Market Street, together with your certificate or certificates for Trustees' Participation Shares endorsed in blank and witnessed. There will be issued to you an Interim Receipt for the shares deposited, which when the Plan has become effective as above set forth may be presented for ex-

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change for the permanent Certificates of the Banco-Kentucky Company, in accordance with the Plan of Reorganization."

19. Banco was established for its avowed purposes with no thought on the part of any of its organizers of avoiding double liability on their Banco stock.

20. The prospectus of date July 19, 1929, was mailed to each T. P. C. holder.

21. On September 20, 1929, the day after the closed date for deposit and subscription for Banco stock, a meeting of its Directors was held. At this meeting it was reported to the Board that as a result of the efforts of the organizers of the Company, Six hundred thousand (600,000) shares of its stock had been subscribed for at \$25.00 a share; that the deposit of T. P. C.'s for exchange was almost unanimous and the Board then reserved for exchange so as to cover all of the T. P. C.'s 1,150,000 shares of Banco stock, which, with the sale of 600,000 disposed of 1,750,000 shares, leaving 250,000 shares of the authorized issue undisposed of. Mr. Brown, President, asked the Board for and was granted authority to sell the 250,000 shares left at \$25.00 per share.

22. When the Board ascertained that the deposit of T. P. C.'s for exchange for Banco stock on the ratio of two shares of Banco for one Participating Share was almost unanimous, it set in motion plans to amend the charter of Banco increasing its capital from 2,000,000 shares to 5,000,000 shares.

23. In January 1930, the charter of Banco was amended and its authorized capital increased from 2,000,000 shares to 5,000,000 shares, which was pursuant to the plans to that effect.

24. On September 27, 1929, and at a meeting of the Board of Banco, a minute was made authorizing a con-

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tract with Blyth & Company and H. M. Byllesby & Company for the sale of 250,000 shares of Banco stock at \$25.00 per share.

25. Banco collected on call, and from the subscribers to its stock, in cash \$9,869,650.00 or \$25.00 per share for 394,786 shares.

26. Although the prospectus of July 19, 1929, and subscriptions for stock thereunder were confined to the T. P. C. holders, the public generally subscribed for or bought stock of Banco, and the organizers of the company sought to sell stock generally to the public.

27. The Directors of Banco, at the time of the formation of that company, owned 76,115 T. P. C.'s, which they exchanged for 152,230 shares of Banco. The maximum possible assessment liability on these T. P. C.'s was \$761,150.00.

28. In addition to the T. P. C.'s exchanged, the directors of Banco subscribed for 47,188 shares and paid to the company in cash \$1,179,750.00.

29. Prior to the organization of Banco there were 2,225, in number, T. P. C. holders.

30. On January 1, 1930, Banco had 5,660 stockholders; on April 1, 1930, Banco had 5,717 stockholders; on July 1, 1930, Banco had 6,000 stockholders and on October-1, 1930, Banco had 5,930 stockholders.

31. Of the 2,225 T. P. C. holders, and as of October 21, 1929, 646 of them subscribed for 178,878 shares of Banco at \$25.00 per share and paid to Banco in cash \$4,471,950.00, in addition to the stock exchanged.

32. Between September 25, 1929, and November 22, 1930, Banco acquired either by cash or exchange of stock the following property:

540,484 T. P. C. shares of the Bank and Trust Company;
47,854 shares of Pearl-Market Bank and Trust Company,

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Cincinnati, Ohio; 44,290 shares of capital stock of Brighton Bank & Trust Company of Cincinnati, Ohio; 548 shares of Central Savings Bank & Trust Company of Covington, Kentucky; 2,099 shares of Peoples-Liberty Bank & Trust Company of Covington, Kentucky; 6,925 shares of First National Bank of Paducah, Kentucky; 7,125 shares of Ashland National Bank of Ashland, Kentucky; 2,713 shares of Security Bank of Louisville, Kentucky; 575 shares of Mechanics Trust & Savings Bank of Paducah, Kentucky; \$2,000,000.00 note of James B. Brown; 625 shares of Union Central Life Insurance Company; 10,000 shares of Caldwell & Company; \$580,000.00 note of Murray Rubber Company of Trenton, New Jersey; \$20,000.00 Participation in note of Louis C. Humphrey.

33. The condition of Banco, as shown by its records, as of December 31, 1929, was, as follows:

Investments (all bank stock)	\$34,643,376.21
Bills Receivable	2,000,000.00
Cash	3,012,478.14
Total	<u>\$39,655,854.35</u>
Liabilities:	
Capital	\$15,326,690.00
Surplus and Profits	23,329,164.35
Bills Payable	1,000,000.00
Total	<u>\$39,655,854.35</u>

34. A statement of the Bank was printed showing its capital, surplus and undivided profits, as follows:

Capital	\$4,000,000.00
Surplus and Profits	3,235,673.27
Total	<u>\$7,235,673.27</u>

35. A statement was printed showing the capital and surplus of the Trust Company as of December 31, 1929, as follows:

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Capital	\$1,750,000.00
Surplus	1,506,269.11
Total	<u>\$3,256,269.11</u>

36. From the date of the organization of Banco to the date it contracted for an interest in Caldwell & Company, its directors regularly met separately, and had reports from its officers. Minutes were kept of its board meetings, and the directors continued throughout said period their endeavors to carry forward the original plan they had in mind for forming the company.

37. On June 1, 1930, Banco contracted for 10,000 shares of the capital stock of Caldwell & Company, which had an issued and outstanding capital of 20,000 shares of the par value of \$100.00 each. At that time Caldwell & Company was engaged generally in the business of underwriting first mortgage bonds, financing, and was known as the largest and strongest investment house in the South.

38. In 1926 Caldwell & Company had sold and distributed about \$40,000,000.00 in securities, and from then on, to and including 1929, its distribution had increased to where it sold and distributed \$75,000,000.00 in securities in 1929, and for the first five months of 1930 its sales and distributions were around \$37,000,000.00.

39. The contract for the acquisition of a one-half interest in Caldwell & Company was entered into in June, 1930, but the amount to be paid by Banco was subject to an ascertainment of the asset value of Caldwell & Company.

40. The contract between Caldwell & Company and Banco was, as follows:

"MEMORANDA OF AGREEMENT, made this 28th day of May, 1930, by and between the BANCO-KENTUCKY COMPANY, a Delaware Corporation,

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as first party, and CALDWELL & COMPANY, a Tennessee Corporation, as second party.

WITNESSETH:

For and in consideration of the mutual promises and covenants of the parties hereinafter contained, it is agreed:

1. The second party has increased its authorized capital stock from \$1,000,000.00, divided into 10,000 shares of the par value of \$100.00 each, to 20,000 shares of the par value of \$100.00 each.

2. The first party will issue and deliver to the second party 900,000 shares of the par value of \$10.00 each of its presently authorized but unissued stock for the additional 10,000 shares of stock of the second party, as provided in Section 1 hereof, which said 10,000 shares the second party will issue and deliver to the first party at the time of delivery to it of the aforesaid 900,000 shares of stock of the first party. Upon such mutual delivery of stock the second party will deposit 200,000 shares of the said 900,000 shares of capital stock of the first party with the Louisville Trust Company, Louisville, Kentucky, to be held by said Trust Company for redelivery to the second party upon the joint order of the presidents of the respective parties, pending such examinations and investigations as the first party may desire to make under Sections 7 and 8 of this agreement and as security of performance by the second party under said Sections 7 and 8.

3. At the time of such mutual delivery of stock, the first party will have 5,000,000 shares of stock of the par value of \$10.00 each authorized, of which, exclusive of the aforesaid 900,000 shares to be issued to the second party 1,633,705 shares shall have been issued, and there is no option or contract of sale of stock of the first party outstanding (with exception of options on an aggregate amount of 250,000 shares of Common Capital Stock to H. M. Byllesby & Company, Blythe & Company, and Wakefield & Company at \$26.50 per share, such option expires June 1, 1930).

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4. At the time of said mutual delivery of stock, the second party will have an authorized capital stock of 20,000 shares of the par value of \$100.00 each, of which, exclusive of the 10,000 shares to be issued to the first party, 10,000 shares shall have been issued.

5. Neither party, pending consummation of this transaction by the mutual delivery of said stocks, will make any disposition of any material portion of its assets nor take any unusual step or one other than in the due course of business except with the written consent of the other.

6. The first party covenants that it owns the following amounts of the total issued and outstanding stock of the following banks:

NAME	LOCATION	TOTAL CAPITAL PAR VALUE	AMOUNTS OF STOCK OWNED
National Bank of Ky. } Louisville Trust Co. }	Louisville	5,750,000.00	5,391,190.00
The Brighton Bk. & Tr. Co.	Cincinnati, Ohio	500,000.00	442,900.00
The Pearl-Market Bk. & Tr. Co.	Cincinnati, Ohio	600,000.00	472,100.00
Peoples Liberty Bk. & Tr. Co.	Covington, Ky.	650,000.00	169,800.00
Cent. Sav. Bk. & Tr. Co.	Covington, Ky.	60,000.00	54,800.00
Ashland National Bank	Ashland, Ky.	800,000.00	626,300.00
First National Bank	Paducah, Ky.	150,000.00	136,500.00
Security Bank	Louisville, Ky.	300,000.00	209,000.00

"The first party represents that on May 1, 1930 the combined or total capital, surplus and undivided profits of the aforesaid banks, as shown by their books, were \$17,192,870.76, and that the total assets of said banks, as shown by their books, were \$124,129,966.95; that the first party had no liabilities and on said date it had cash to the amount of \$1,297,893.47 and good and collectible notes in the principal amount of not less than \$2,000,000.00.

7. The second party represents that, as of May 28, 1930, its assets were of such fair aggregate value that,

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after deducting therefrom all of its liabilities, it had a net worth of not less than \$9,000,000.00.

8. The first party shall within twelve (12) months from the date hereof, satisfy itself as to the valuation of the assets of the second party in the computation of the net worth of the second party, as set forth in Section 7, of this agreement.

The President of Banco Kentucky Company and the President of Caldwell & Company will determine the valuation of such assets in the computation of the net worth of the second party with the right in either party to have competent assistants in reaching a determination. If the Presidents of the respective parties are unable to agree upon the valuation of any asset or assets, then and in that event, they will select a third party as arbitrator, who will then determine said valuation. If the Presidents of the respective parties are unable to agree upon a third party to act as arbitrator as aforesaid, then and in that event they will select Mr. Whiteford R. Cole who will, in turn, select an arbitrator.

If the net worth of the second party is ascertained to be less than \$9,000,000.00 based upon such valuation of its assets, then and in that event the second party at its option will deliver to the first party \$2.22 in cash or stock of the first part (on basis of \$25.00 per share) for each \$1.00 of such deficit or the second party may forfeit any dividends on such part of its stock as is not owned by the first party until an amount equivalent to such deficit is accumulated in the treasury of the second party (provided its stockholders other than the first party shall agree to such forfeiture of dividends). If the net worth of the second party is ascertained to be more than Ten Million (\$10,000,000.00) Dollars, then and in that event the first party will deliver to the second party \$1.00 of its capital stock (on basis of \$25.00 per share) for each \$1.00 of such excess.

9. The first party agrees that in the event it desires to sell or otherwise dispose of all or any part of its stock interest in the second party at any time subse-

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quent to the consummation of this contract, that it will not sell or otherwise dispose of said stock without first offering same to Rogers Caldwell, his successors and assigns, for an amount not in excess of bona fide offers obtained for such stock from other parties.

10. The first party agrees to establish and maintain a co-operative working agreement between the security departments of its several banks and the second party in the distribution and underwriting of securities.

11. The second party will retain a substantial investment in the insurance business and may carry further its program to acquire, direct and develop insurance companies.

12. The general spirit and purpose of this agreement and the consolidation of the interests of the first and second parties is to further the development of each company and to create a vehicle for further extension and development in the commercial and investment banking and insurance fields.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in duplicate through their officers duly authorized to act by their respective boards of directors on the day and date first above written.

THE BANCOKENTUCKY COMPANY

(Signed) By JAMES B. BROWN,
President First Party

CALDWELL & COMPANY

(Signed) By ROGERS CALDWELL,
President Second Party

(Handwritten initials, "J. B. B." and "R. C." on margin.)"

The above contract was never fully consummated.

41. The total resources of Banco, according to its Balance Sheet, as of September 18, 1930, were \$62,936,724.23, and its net worth \$61,886,724.23.

42. The published statements of the Bank, beginning on January 11, 1927, and ending on October 11, 1930, showed

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the capital of the Bank to be intact, and in addition thereto, surplus, undivided profits and reserves as follows:

July 11, 1927	4,601,379.47
April 2, 1927	4,678,416.90
July 12, 1927	3,082,438.49
October 21, 1927	3,105,662.87
January 11, 1928	3,096,290.51
March 16, 1928	3,007,996.91
July 28, 1928	2,901,899.65
October 18, 1928	2,817,753.00
January 13, 1929	2,855,342.40
April 8, 1929	2,918,910.53
July 11, 1929	2,929,034.48
October 18, 1929	2,838,539.96
July 15, 1930	3,011,826.23
April 9, 1930	2,835,656.80
July 11, 1930	2,658,133.68
October 11, 1930	2,728,745.29

The capital of the Bank, as shown by the statements, at the date of the publication of the statements of January 11, 1927, and April 2, 1927, was \$2,500,000.00, with a surplus of an equal amount. Thereafter, the capital was \$4,000,000.00, with a surplus of \$2,000,000.00.

43. The bank declared and paid dividends amounting to \$160,000.00 a quarter to its stockholders, beginning June 10, 1927, and ending September 17, 1930. Following each dividend declared and paid, and pursuant to the United States Revised Statutes, the Cashier of the Bank, under oath, filled in a form provided by the Comptroller of the Currency showing the net earnings available for dividends in excess of the capital and surplus of the Bank, and after deducting known losses and statutory bad debts, and in each instance said report showed that there were sufficient net earnings available for dividends to leave the capital of \$4,000,000.00 and the surplus of \$2,000,000.00 intact, each of which reports was received by the Comptroller.

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44. The Bank was examined twice a year, beginning April 23, 1927, and ending September 17, 1930, by a representative of the Comptroller's office. Each of said reports was on a form prepared by the Comptroller of the Currency and contained a questionnaire as to dividends and surplus, requiring the Examiner to give the date of the declaration of the last dividend, the amount of same, and to state whether the last report of earnings and dividends was correct, and in each instance the Examiner reported in each of said reports that all earnings and dividends were correct. A copy of each of said reports was sent to the Comptroller by the Examiner directly upon its completion and was received by him.

45. Not one of the dividends declared and paid by the Bank during the period from April, 1927 to September, 1930, was criticized by the Comptroller of the Currency, either in the letters of the Comptroller to the Bank or in the reports of the Examiners.

46. Caldwell & Company failed on the 5th day of November, 1930, and following that failure \$12,000,000.00 was withdrawn by the depositors of the Bank from the Bank.

47. On November 17, 1930, the Comptroller of the Currency appointed Paul C. Keyes as Receiver of the Bank.

48. On November 24, 1930, a petition was filed in the Jefferson Circuit Court, for the appointment of a receiver for Banco, and thereafter Joseph Laurent was appointed Receiver.

49. On February 20, 1931, the Comptroller of the Currency, upon an accounting had by the Receiver of the Bank, and upon a valuation of the uncollected assets of the Bank remaining in his hands, determined that it was necessary to enforce the individual liability of the stockholders thereon under Sections 5151 and 5234 of the Revised Statutes,

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and thereupon made an assessment upon the stockholders of the Bank of the full par value thereof of \$4,000,000.00.

50. On March 20, 1931, Paul C. Keyes, then Receiver of the Bank, sent by registered mail to the stockholders of Banco the following notice:

“Louisville, Ky., March 20, 1931.

“As a stockholder in The BancoKentucky Company you will please take notice, that the Comptroller of the Currency has on February 20, 1931, levied an assessment upon the stockholders of The National Bank of Kentucky, Louisville, Kentucky, on the par value of each and every share, payable at the office of the Receiver, on or before April 1, 1931. A notice of such assessment and a demand for payment of the same has been served upon the Receiver of the BancoKentucky Company as the holder of 540,484 Trustees' Participating Certificates, issued under a certain trust agreement of April 22, 1927, which Trustees' Participation Certificates represent the ownership of 37,721,624 shares of stock in The National Bank of Kentucky. You will, therefore, take notice that it is the intention of the undersigned, as Receiver of the National Bank of Kentucky, to proceed against you for the collection of the aforesaid assessment liability represented by the said Trustees participation certificates held by said BancoKentucky Company, to the extent that the undersigned, as Receiver of the National Bank of Kentucky is unable to collect said assessment from The BancoKentucky Company or its Receiver.”

51. On March 31, 1931, the said Paul C. Keyes, as Receiver of the Bank, filed Equity Action No. 649 in the Federal District Court for the Western District of Kentucky, in which he sought to recover more than \$14,000,000.00 from those who were directors of the Bank from 1926 to 1930, the date of its close.

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52. In the suit filed by Paul C. Keyes, as aforesaid, the basis for the recovery against the directors was: (a) For common law negligence, and (b) violation of the federal statutes.

53. The defendant directors in said action No. 649 filed an answer controverting the allegations of the Bill of Complaint.

54. After the issues were joined on the various allegations of the Bill of Complaint in equity action No. 649 aforesaid, an order was made referring the case to the Hon. W. P. Sandidge, Special Master, with directions to make findings of fact and conclusions of law and to file his report with the court.

55. The Special Master made his report consisting of 362 printed pages.

56. The T.P.C.'s before the par value was reduced and after the consolidation of the Trust Company and Louisville National Bank, were currently selling at \$460.00 per share.

57. After the par value of these certificates was reduced from \$100.00 to \$10.00, they were currently selling at \$46.00 per share, and this price advanced until October 1st, when they were selling at \$50.00 per share.

58. On December 27, 1929, certain directors of the Bank executed a surety bond guaranteeing certain City of Louisville deposits in the Bank, which bond was for \$500,000.00.

59. At the time of the exchange of Banco shares for T.P.C.'s, the latter had a market in Louisville of "46 bid and 48 asked."

60. The stockholders of Banco had, at the time the Bank and Trust Company closed, deposits, in the Trust Company of \$858,093.71, of which the deposits of approximately 80% of the stockholders were net, after offsets, and the balance of 20% were gross deposits of stockholders, or before off-

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sets; and net deposits, after offsets, in the Bank of \$1,254,783.27, or a total in both of \$2,112,876.98.

61. Banco was organized in good faith.

62. Banco was "certainly not a sham."

63. Banco was "not organized for a fraudulent purpose or to conceal secret or sinister enterprises conducted for the benefit of the Bank."

64. Banco was not a mere holding company.

65. Banco "was formed for the purpose set out in the letter of July 19, 1929, and for no other purpose."

66. Banco "was not formed as a medium or agency thorough which to avoid double liability on the stock of the Bank."

67. There were irregularities in the handling of some of the credit accounts of the Bank, but the soundness of the Bank and its ability to meet its obligations could not be questioned, until long after the formation of Banco.

CONCLUSIONS OF LAW

1. The alleged liability, if any, of the defendants, is entirely statutory.

2. Before they can be held subject to assessment, they must, in effect, be stockholders of the Bank.

3. The burden of proof was on the plaintiff.

4. Banco was not an empty shell, but was a very real entity, actively acquiring capital assets.

5. Banco directors controlled the Bank, but the identity of directors of ownership of stock did not merge them into one corporation.

6. It was legal for Banco to purchase T.P.C.'s by exchange of its stock or for cash.

7. Banco was not a mere holding company, but was formed for the purpose set out in the letter of July 19, 1929, and for no other purpose.

Defendants' Motion for Additional Findings of Fact

8. Banco was not formed as a medium or agency through which to avoid double liability on the stock of the Bank.

9. Banco was the true, legal and beneficial owner of the stock of the Bank.

10. The transfers of the T.P.C.'s to Banco were out and out transfers, and Banco thereby acquired full legal title thereto.

11. The stockholders of Banco were not stockholders of the Bank within the meaning of the statute.

12. Plaintiff's Bill should be dismissed.

13. The judgment in *Atherton v. Anderson*, 86 F. (2d), 518, is not res judicata of this case, and defendants' pleas of res judicata, election, estoppel and estoppel by judgment should be overruled.

14. In view of the conclusion reached, to dismiss the Bill, it becomes unnecessary to consider the many special defenses interposed by a great number of the defendants.

Exceptions are reserved for the plaintiff to each and all of the foregoing Findings and Conclusions, and to the defendants as to legal conclusion No. 13.

MAC SWINFORD (signed)

Judge

June 29, 1940

DEFENDANTS' MOTION FOR ADDITIONAL FINDINGS OF FACT

(Filed June 29, 1940)

Come the defendants, by their counsel, and move the Court for further and additional Findings of Fact in the following particulars, to-wit:

1. The stockholders of the Bank and Trust Company, agreed, prior to April, 1927, to unify their stock by creating a trust, consisting of the capital stock of both insti-

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tutions, to be deposited thereunder. The par value of the shares of each institution was \$100.00. The basis of contribution to the trust was 4 shares of Bank stock to 1 share of Trust Company stock. The net worth of the Bank at that time was \$7,189,292.25, and the net worth of the Trust Company was \$1,830,123.32. The issued and outstanding capital of the Bank at the time of the unification was 40,000 shares, and the issued and outstanding capital stock of the Trust Company was 10,000 shares.

2. Each of these dividends so declared and paid was approved by the National Bank Examiners in their reports down to and including the dividend of July 1, 1930, and the one paid on October 1, 1930, was not criticized.

3. The criticisms of the Bank by the Comptroller of the Currency during the periods above referred to, were concealed from the non-officer Directors, by the officers of the Bank principally Brown, from the dates they were made, down to the close of the Bank.

4. The parties to the Reorganization Plan, referred to in the July 19, 1929, letter, and in the opinions of the attorneys, were "the Trustees for the Trustees' Participation Shareholders under the agreement of April 22, 1927, on the one part, and the Banco Kentucky Company on the other," and the purpose of the Trustees in procuring a ruling from the Revenue Department was to ascertain whether or not the Trustees were an "association or corporation within the definition or meaning of the Revenue Act."

5. Neither the Bank nor the Trust Company was a party to any reorganization, and the shares of neither the Bank nor Trust Company were to be or were acquired by Banco in the reorganization.

6. The question of an amendment or reorganization of either the Trust Company or the Bank was not discussed

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by the directors of the Bank or Trust Company, and those two institutions "were to be left exactly as they were then existing, and they were so left without any authority to change or reorganize them in any manner or form."

7. There was no contract drawn or entered into between the Bank or Trust Company and Banco for the reorganization of the Bank or Trust Company.

8. The directors of Banco did not, in their plans for its organization, contemplate that more than 350,000 shares of the T. P. Cs. would be deposited for exchange in response to the letter of July 19th, and fully expected to have, out of the 2,000,000 shares of Banco authorized, approximately 1,300,000 shares for sale at \$25.00 per share, so as to provide a working capital in cash of \$30,000,000.00 or more.

9. The original plan, as discussed by the Board, was to have in Banco working capital in cash at not less than \$30,000,000.00 and when they ascertained on September 20, 1929, that the deposit of the T. P. Cs. for exchange required, to meet those exchanges, approximately 1,150,000 of its shares, they determined that there was not sufficient stock left for sale for cash to provide the working capital thought to be necessary, which prompted the amendment to the charter of Banco, increasing its capital from 2,000,000 shares to 5,000,000 shares.

10. At the time plans were set in motion to increase the capital stock so as to provide additional shares, and in October, 1929, the stock market crash occurred, which made it impossible to sell new issues, and which interfered with the directors in carrying forward the plan to have the working capital above referred to, although it was discussed by the Board of Directors from time to time and the original plan was never abandoned.

11. The purchase of a one-half interest in Caldwell & Company was discussed by the Board over a period of

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sixty to ninety days, and it was generally believed by the directors that it was an opportunity to do a general investment banking business and in purchasing the half interest it appeared to them that it was a good opportunity to get in the general security business without the expense incident to organization. It was an established business with offices in many cities, with a name and good will and was thought at the time to be doing what Banco was chiefly organized to do.

12. It had theretofore been invited into the general financing field by J. P. Morgan, Halsey Stewart and Dillon Read, and had established a reputation as a distributing house with offices in twenty-two cities in the United States.

13. The investment of Caldwell & Company in bank stocks between January and May, 1930, was not more than 5% of its total investments in securities.

14. Caldwell & Company received 900,000 shares of the capital stock of Banco in exchange for 10,000 shares of its stock, but it was agreed between the parties to the contract that Caldwell & Company was not entitled to any dividends upon Banco stock prior to the valuation of Caldwell's assets.

15. Robert Neill, Chief National Bank Examiner, made a last examination of the bank. He approved the dividend declared June 20, 1930, and paid July 1, 1930. He saw the resolution of the Board declaring the dividend as of September 19, 1930, six days before that dividend was paid. He did not criticize the payment of the dividend, and it was subsequently paid.

16. With few immaterial exceptions, all of the proof introduced in this cause was introduced by the plaintiff in Equity Action No. 649.

17. On the claim asserted in the Bill, in Equity Action No. 649, based upon the statutory violations and common

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law negligence, the two sharp issues of fact were necessary to be determined, and those were:

(a) Whether or not the letters from the Comptroller of the Currency ever reached the non-officer directors of the Bank, or whether they knew of such letters having been written at any time during their terms of office;

(b) Whether or not the minute books of the Bank showing that such letters were read to the Board, were false and fraudulent; and on the issues thus joined the Master found:

"I don't think that any of these letters reached the board of directors, notwithstanding the recitation in the minutes to that effect. The minute book now indicates that there were six such letters presented and read to the board, namely, December 16, 1927, p. 304, of the minute book; June 1, 1928, p. 318 of the minute book; June 8, 1928, p. 319 of the minute book; June 22, 1928, p. 320 of the minute book; August 31, 1928, p. 325 of the minute book, and December 7, 1928, p. 332 of the minute book. It is satisfactorily established that the minutes, after being read to the board, were fraudulently altered so as to show the presentation and consideration of these letters. The concealment of these letters from the Board and the fact that such questionable, not to say dangerous, means were resorted to to accomplish it, demonstrates the character of the collusion with which the directors were unknowingly surrounded."

18. Another issue presented in Equity Action No. 649, which was necessary to be decided by that Court, in order to determine the claims of the plaintiff therein, was whether or not the criticisms contained in the National Bank Examiners' reports ever reached the board and were known to the board, and on the issue thus joined the Master found:

"It is perfectly apparent that Brown and Jones, without protest from any member of the loan committee, were designedly omitting to read parts of the re-

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ports of the Examiners, concealing letters from the Comptroller, fraudulently evading the demands of that office, and continuously misleading the non-officer directors. The covering up which Brown and Jones were guilty of, and their acts of concealment in the presence, and with the acquiescence, of the other officers while the board of directors was in session, strongly indicates collusion between these parties, the purpose of which was to enable Brown, without the knowledge of the non-officer directors, to successfully extract funds from the bank in the name of Wakefield & Company or its employees."

19. Exceptions were filed to the report of the Master involving the above findings as to the Bank Examiners' reports, and letters from the Comptroller by the plaintiff in said action, No. 649, and the case came on to be heard before the Hon. Arthur Tuttle, sitting by designation, as Judge of the Federal District Court for the Western District of Kentucky, and Judge Tuttle sustained the Master in the above respects in the following language:

"The Special Master found . . . further, he fraudulently caused to be concealed from the non-officer directors reports of the bank examiners, letters from the Comptroller of the Currency and other information which would have disclosed the character of such loans, as loans to Wakefield & Company in excess of the statutory limit. That such directors did not have such information, had no reason to doubt the propriety of such loans, and, in approving them, relied on the officers of the bank to whom they had entrusted the administration of the details of its affairs; that such directors were not guilty of negligence in connection with such loans, and that, although the defendant officers were liable for the loss resulting from the making of these loans because they knew that such loans should be grouped together as Wakefield & Company loans, and, when so grouped, were in excess of the said

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statutory limit, yet, the other defendants being without that knowledge, were not so liable, except as herein-after pointed out. I am satisfied by the record that the findings of the Master just mentioned are supported by substantial evidence and that the Court would not be warranted in setting such findings aside."

20. An appeal was prosecuted from the judgment entered by the Hon. Arthur J. Tuttle, following his opinion, to the Circuit Court of Appeals for the Sixth Circuit, and that Court confirmed and approved the findings of the Master and the District Court, as set forth in the next above two preceding paragraphs on the issues thus joined, and those findings of fact are still in full force and effect.

21. That another issue in said Equity Action No. 649, filed in the District Court of the United States for the Western District of Kentucky against all of the directors of the Bank, was whether or not the dividends declared and paid by the Bank, from June 10, 1927, to September 30, 1930, amounting to \$160,000.00 per quarter, or \$2,240,000.00 as a whole, had been unlawfully paid, and upon the issue the plaintiff in said action sought judgment against the directors for \$2,240,000.00. Upon the issue thus joined, and after a full hearing, the Master, in his report, held that each of said dividends had been lawfully declared and lawfully paid.

22. Thereafter, exceptions were filed to the Master's report by the plaintiff in that cause, and came on to be heard before the Western District Court aforesaid, and the Western District Court affirmed and approved the findings of the Master with reference to the claim of illegality of such dividends in the following language:

"The Master disallowed this claim in its entirety, finding that the evidence failed to show any facts indicating any statutory violation of any of the directors

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or any negligence on their part in connection with these dividends. The Master discussed and analyzed, at great length and in much detail, numerous debts which the plaintiff claims should have been charged off as statutory bad debts, and after painstaking and thorough consideration of such debts and of the other relevant facts and circumstances, the Master found that the evidence did not sustain this claim of the plaintiff. To recite or review these details would unduly prolong this opinion and would serve no useful purpose. It is sufficient to say that the findings of the Master are convincingly supported by the record. It is entirely clear and I find, that the witnesses on whom the plaintiff relied in this connection had no personal knowledge of the facts concerning which they assumed to testify. There is no competent evidence to sustain the burden resting on the plaintiff of proving that any of these dividends were paid out of capital of the bank or were not paid out of its net profits after deducting therefrom its losses and bad debts, including all debts on which interest was past due and unpaid for a period of six months and which were not all secured and all debts in process of collection. It appearing that the findings of the Master are supported by the record, such findings are affirmed, and no recovery against these directors by reason of the declaration or payment of these dividends will be awarded."

23: Following the opinion of the District Court for the Western District of Kentucky, and on July 8, 1935, a judgment was entered therein dismissing the Bill of Complaint in so far as it sought recovery of the aforesaid dividends, and no appeal has been prosecuted therefrom in that respect, and accordingly it is final.

24. Another issue asserted in Equity Action No. 649, Federal District Court for the Western District of Kentucky, was upon a claim made against the directors of the Bank amounting to more than \$1,700,000.00, based upon

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loans made by the Bank secured by stock of Banco, it being claimed by the plaintiff in said action that loans made on Banco stock was equivalent to loans being made upon the stock of the Bank itself.

25. On the issue as to whether or not Banco was organized as merely a holding company for holding stock of the Bank, and the issue as to whether the Bank could legally take the stock of Banco as collateral security, the Master found:

"(a) In the organization of the Banco Kentucky Company it was contemplated that the company should purchase as many of such participating certificates as possible, paying for same with stock of the Banco Kentucky Company at \$25.00 a share. It was estimated that 350,000 participating certificates would be thus acquired. It turned out, however, that there were turned in for exchange about 470,000 certificates out of a total of 575,000 participating certificates."

(Master's Report, 161.)

"It was thus clearly not contemplated in the beginning or intended at any time, that the Banco-Kentucky Company should be organized merely as a holding company for the stock of the National Bank of Kentucky.

"In fact, the participating certificates above referred to represented an interest in the Louisville Trust Company as well as the National Bank of Kentucky. Furthermore, before the Banco Kentucky Company acquired title to any of the participating certificates representing the ownership of the National Bank of Kentucky and the Louisville Trust Company, it had arranged for a sale of a large part of its authorized capital to the public for cash. Shortly after the purchase of the two Cincinnati banks, it proceeded to take over the Central Savings Bank & Trust Company of Covington, Kentucky, certain stock in the Union Cen-

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tral Life Insurance Company of Cincinnati, the Peoples-Liberty Bank & Trust Company of Covington, the Ashland National Bank, Mechanics Savings Bank, the First National Bank of Paducah, Kentucky. . . . The value represented by the ownership of the banks and properties, other than National Bank of Kentucky, soon exceeded the value of the assets represented by its purchase of participating certificates covering its interest in the National Bank of Kentucky.

"I think it goes without saying, or serious argument, that the National Bank of Kentucky could legally take stock of the BancoKentucky Company as collateral security on notes executed to it by borrowers. I think there was in this instance no such identity between the two companies as would make the taking of such stock a violation of Section 83, United States Code, 'Title—Banks & Banking,' Revised Statutes 5201."

26. Exceptions were filed by the plaintiff in Equity Action No. 649 to the report of the Master, making the findings in the next paragraph above stated. On a hearing before the District Court (7 F. Sup. 924), the District Court said:

"The Master, although not making any findings of fact inconsistent with the findings of this Court just stated, held that, on these facts, the plaintiff had not shown such a connection or relation between the Bank and BancoKentucky Company as to render the making of these loans on this collateral a violation of the statute in question. With this conclusion of the Master, I am unable to agree."

"Applying these principles to the situation here presented, the National Bank of Kentucky could not make a loan to itself and could not make loans to anyone else and take its own capital as collateral for such loans. The directors of the National Bank of Kentucky caused to be organized this holding company, to which was given the suggested name of BancoKentucky, which was, indeed, intended to be and was, in many

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important respects and in a very real sense, as the record abundantly shows, the National Bank of Kentucky Company. It owned, as already indicated, a substantial amount of the stock of the Bank of Kentucky which was in fact, at the outset, its principal asset, and at all times thereafter continued to be its most valuable single asset, so that it was forced to close its doors a few days after the closing of the Bank.—During this brief life of the Banco-Kentucky Company, and while the Bank could not loan money on its own stock as collateral, it made the loans now under consideration in the aggregate amount already mentioned, and took Banco-Kentucky Company, which was, in substance and effect, not only its own holding company but also, at least in equity, its alter ego, so to speak.”

27. On July 8, 1935, and following the decision made by Judge Tuttle, sitting by designation as District Judge for the Western District of Kentucky, that Court entered a judgment against the directors for all loans made on the security of Banco stock, which were adjudged to be, in the opinion of the Court, “loans on the security of the Bank's own stock,” for approximately \$1,600,000.00.

28. An appeal was prosecuted by the directors from that section of the judgment to the Circuit Court of Appeals for the Sixth Circuit, and that Court, on the issue thus joined, said:

“Prior to September 11, 1929 negotiations had been begun by the Banco-Kentucky Company for the purchase of two Cincinnati banks, Pearl-Market Bank & Trust Company, and the Brighton Bank & Trust Company, and on September 25, 1929, a contract for the purchase of the controlling interest in each was concluded—though they were actually taken over some time later. The consideration included shares of Banco, which, on the basis of \$25. per share, represented a total of \$2,159,875.00. When most of the assailed loans

Defendants' Motion for Additional Findings of Fact

were made on Banco stock, the situation was substantially as follows: Banco owned 470,000 of a total of 575,000 trust participating certificates representing ownership of stock in the Bank and in the Louisville Trust Company, it had subscriptions to its own stock in the amount of \$10,000,000, on which \$5,784,875 had been paid by October 1, 1929, and \$9,222,451.21 by October 10, 1929, and it had concluded the purchase of a controlling interest in the two Cincinnati banks. The master accordingly found that 'It was thus clearly not contemplated in the beginning, or intended at any time, that the Banco Kentucky Company should be organized merely as a holding company for the stock of the National Bank of Kentucky,' a finding not rejected by the District Court."

"We come now to the question whether the relation between the bank and the Banco Kentucky Company was such that a court of equity would be warranted in disregarding the existence of Banco as a separate corporate entity. It is true that Banco was conceived in the vaulting imagination of the president of the bank; that it was promoted and fostered by the appellants; that the directors of the two corporations, though not identical, overlapped; that the great majority of trust participation certificates representing stock in the bank became the property of Banco, and that there is a suggestion of identity in the name adopted by the new company.

"But Banco was not a mere holding company, for the bank's stock. It was organized for clearly defined purposes, too optimistically conceived, perhaps, but neither illegitimate nor unlawful. It had its own capital with cash resources at one period almost twice the entire capital and surplus of the bank. While in the very beginning the bank stock may, as found by the court, have been its principal asset, and may have continued thereafter to be its most valuable single asset, it had other assets of very substantial value, and it was warrantable inference at the time of its organization and for a substantial period thereafter that

Defendants' Motion for Additional Findings of Fact

it could well meet any assessment that might be levied upon it as a stockholder of the bank. At any rate there is nothing in the record to point to its creation for the purpose of escaping such assessment. Indeed when the assessment was finally made by the Comptroller it was enforced against Banco and not against the stockholders. See *Laurent v. Anderson*, supra. Its separate corporate existence was recognized by the very receiver on whose behalf we are now asked to ignore it.

"The Banco Kentucky Company was certainly not a sham, for nearly ten million dollars of actual cash paid for its stock attest its reality; and there is nothing in the record to point to it as an instrumentality of the bank. Nor was it organized for a fraudulent purpose or to conceal secret or sinister enterprises conducted for the benefit of the bank. The master absolved the appellants of all suspicion of bad faith and the court approved his finding in the last of three carefully reasoned opinions (D. C. 11 Fed. Supp. 9, 14).

"Certainly we must accept this as the deliberate judgment of the court rather than as a euphemism, easing the blow to the sensibilities as it fell heavily upon the purse."

29. Following the opinion of the Circuit Court of Appeals aforesaid and after various steps, the Circuit Court of Appeals issued its mandate on the opinion aforesaid, which was filed in the District Court of the United States for the Western District of Kentucky, and pursuant thereto a judgment was duly entered in said Court dismissing so much of the Bill of Complaint as sought judgment against the directors by reason of the loans on the collateral of Banco stock.

30. Among the directors of the bank sued in equity action No. 649, aforesaid, were: Dr. Oscar E. Bloch, Charles H. Bohmer, Anthony J. Carroll, George M. Clark, Samuel W. Coons, Allen P. Dodd, Estate of E. M. Drummond, Stuart E. Duncan, Joseph H. Durham, James Garnett, Angereau

Defendants' Motion for Additional Findings of Fact

Gray, T. Kennedy Helm, Baylor O. Hickman, Saunders P. Jones, Estate of Milburn P. Kelley, Walter I. Kohn, Estate of Brainard Lemon, Thomas J. Minary, E. J. O'Brien, Jr.; Estate of Arthur M. Rutledge, William S. Speed, John Stites, Henry Vogt, Estate of John B. Pirtle and Henry D. Ormsby. These same directors, or the estates of those dying, and the assignee of Director Clark, were used in this action brought by the plaintiff receiver herein, who is the same plaintiff receiver who succeeded Paul C. Keyes, the original receiver.

31. After the notice of assessment was sent to the stockholders of Banco on March 20, 1931, the receiver of the Bank, A. M. Anderson, who had theretofore succeeded Paul C. Keyes, filed a petition in the Jefferson Circuit Court, Chancery Branch, Second Division, being No. 205,223, asking leave to sue Banco as the true, lawful and beneficial owner of the stock of the Bank and was granted leave by the Jefferson Circuit Court to file suit; the petition and order granting the right to bring such a suit having been prepared by the same attorneys who are attorneys for the plaintiff in this suit.

32. Following the order granting authority to bring such a suit, the said A. M. Anderson, Receiver, on October 31, 1931, filed his suit in the District Court for the Western District of Kentucky, in which he, among other things, alleged:

"Plaintiff says that said money is due him as an assessment upon the shares of stock of the National Bank of Kentucky owned by the BancoKentucky Company at the time plaintiff was appointed Receiver or upon certain Trustees Participation Certificates representing the National Bank of Kentucky stock, owned by the BancoKentucky Company at the time of said appointment of plaintiff as Receiver.

Defendants' Motion for Additional Findings of Fact

"The Banco Kentucky Company was at the time of the closing of the National Bank of Kentucky, and the appointment of the plaintiff as Receiver, the holder of record of five hundred forty thousand four hundred eighty-four (540,484) Trustees Participation Certificates, having a par value of \$10.00, which Trustees Participation Certificates were issued under the terms of a certain trust agreement of April 22, 1927, and which Trustees' Participation Certificates represent the ownership of 37,721.624 shares of stock of the National Bank of Kentucky of Louisville, as hereinafter more fully set forth.

(Receiver served notice on Banco)

"Advising the defendant that the Banco Kentucky Company was the holder of five hundred forty thousand four hundred eighty-four (540,484) Trustees Participation Certificates issued under the terms of said trust agreement of April 22, 1927, which said Trustees Participation Certificates represent the ownership of 37,721.624 shares of stock in the National Bank of Kentucky, and making demand upon the defendant to pay the assessment on 37,721.624 shares of the National Bank of Kentucky, represented by the aforesaid Trustees Participation Certificates, in accordance with said order and assessment of the Comptroller of the Currency and said notice."

"Notwithstanding said assessment notice and demand upon the defendant, no part of said assessment has been paid and said defendant has refused to pay said assessment or any part thereof, and there is now due and owing to the plaintiff as Receiver of the National Bank of Kentucky the sum of Three Million Seven Hundred Seventy-two Thousand, One Hundred Sixty-two and 40/100 (\$3,772,162.40) Dollars as the assessment and requisition duly made upon the defendant as a shareholder of the National Bank of Kentucky by the Comptroller of the Currency, as aforesaid."

Order Overruling Defendants' Motion

In the aforesaid suit, Anderson recovered a judgment against Laurent, Receiver of Banco, for the full amount of the assessment made upon the stock of the Bank as to T. P. C.'s owned by Banco, and from that judgment an appeal was prosecuted to the Circuit Court of Appeals for the Sixth Circuit, and that Court affirmed the judgment of the lower Court, awarding a judgment against Banco alone for all of the statutory liability covered by the T. P. C.'s and adjudging it to be the true and lawful owner of such certificates, the Court saying:

"... Banco never held stock in the National Bank of Kentucky, but several years after the date of the agreement purchased the Trustees' Participation Certificates, which had been issued under the agreement.

"The sole question for determination is whether Banco is liable to respond as a stockholder in the National Bank of Kentucky as the real and beneficial owner of the stock under Title 12, U. S. C. A. Sec. 64, or whether it is exempt from liability under Title 12, U. S. C. A. Sec. 66." (relieving Trustees of personal liability).

"The evidence establishes that Banco was in every sense the true and beneficial owner of the National Bank stock involved.

"The petition and especially the evidence sustain recovery against Banco as the real and beneficial owner under Section 64 of the National Banking Act (12 U. S. C. A.)."

**ORDER OVERRULING DEFENDANTS' MOTION FOR
ADDITIONAL FINDINGS OF FACT**

(Filed June 29, 1940)

This day came on to be heard the defendants' motion for additional Findings of Fact, and the Court being advised, overruled said motion, to which action of the Court the defendants object and except.

Final Judgment

It is further ordered by the Court that said motion for additional Findings of Fact is made a part of the record herein.

MAC SWINFORD (signed)
Judge

FINAL JUDGMENT

(Entered June 29, 1940)

This cause coming on to be heard upon the pleadings, proof and exhibits filed, and after hearing oral arguments of counsel for the parties, and considering the briefs on file, together with the record herein, and the Court being sufficiently advised as to all matters in the record contained, delivered his opinion herein, which has been heretofore filed, and now files his separate findings of fact and conclusions of law, which are ordered made a part of the record.

Pursuant to the opinion of the Court and the Findings of Fact and Conclusions of Law on file, it is now ordered, adjudged and decreed by the Court, that the Bill herein and the amendments thereto be and the same are dismissed, and that the defendants do have and recover of the plaintiff their costs herein expended, to all of which the plaintiff objects and excepts.

This matter having also come on for hearing on the counter-claim and cross action and amendments thereto of Susie E. Tellman, Frieda Gudex, administratrix of the estate of Emily E. Bischoff, Mary Christine Watkins, Administratrix of the estate of P. A. Gaertner, deceased, Henry M. Johnson, Dr. Charles O. Neff, and Mrs. Pearl G. Shepherd, and on the responsive pleadings of the Receiver of the National Bank of Kentucky to said counter-claim and cross action, and the Court being advised, it is

Notice of Appeal

now ordered, adjudged and decreed by the court that the counter-claim and cross action filed by the above defendants, be and the same is now dismissed, to all of which the said defendants listed in this paragraph who filed said counter-claim and cross action object and except.

This cause having also come on to be heard on the amended answer and cross complaint of Mrs. Bertha Pottinger, Leonard B. McClellan, Sarah McClellan; Louise M. Nachand, S. H. Armes and R. L. Armes (hereinafter called "six cross-plaintiffs") against The Louisville Trust Company, the amendments and purported amendments to said cross complaint, and the motion to dismiss such cross complaint and the amendments thereto, and the Court being advised, it is ordered and adjudged that the amended cross complaint of said six cross plaintiffs and all amendments and purported amendments thereto be and they are hereby dismissed, to which the said six cross plaintiffs object and except.

MAC SWINFORD,
Judge.

NOTICE OF APPEAL

(Filed July 30, 1940)

Notice is hereby given that A. M. Anderson, Receiver of the National Bank of Kentucky, an insolvent national banking association, by direction of the Comptroller of the Currency, Department of the Treasury of the Government of the United States, hereby appeals to the United States Circuit Court of Appeals for the Sixth Circuit from the Judgment and decree entered in this action on June 29, 1940, by the Honorable Mac Swinford, District Judge, dismissing plaintiff's bill of complaint and amendments thereto at plaintiff's costs.

*Stay of Operation of Judgment***STAY OF OPERATION OF JUDGMENT**

(Entered July 30, 1940)

This day came on to be heard plaintiff's motion for a stay of the operation and enforcement of the judgment entered herein on June 29, 1940, dismissing plaintiff's bill of complaint, at plaintiff's costs, and it appearing to the court that notice of appeal to secure the review of said judgment by the United States Circuit Court of Appeals for the Sixth Circuit has been filed with this court by plaintiff, A. M. Anderson, Receiver of the National Bank of Kentucky, an insolvent National bank, by direction of the Comptroller of Currency, Department of the Treasury of the Government of the United States:

It is ordered that the operation and enforcement of said judgment and decree be and the same is hereby stayed, without the execution by said Receiver of any supersedeas or other bond, obligation or security to answer for costs or in damages until the final determination of this cause or until the further orders of the Court.

MAC SWINFORD, *Judge*.

**PLAINTIFF'S DESIGNATION OF CONTENTS OF
RECORD ON APPEAL**

*To the Clerk of the United States District Court
Western District of Kentucky,*

You are hereby authorized to prepare and certify a transcript of the record in the above entitled cause to the United States Circuit Court of Appeals for the Sixth Circuit, pursuant to the appeal heretofore taken, and to include therein the following:

1. BILL OF COMPLAINT—Filed February 17, 1936—
but omitting therefrom the caption listing the names

Plaintiff's Designation of Contents of Record on Appeal

- of defendants and "Exhibit A," attached thereto, also listing defendants, the number of shares owned by each, and the amount of the assessment claimed by plaintiff.
2. AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT—Filed March 28, 1936—but omitting therefrom all except typical paragraphs numbered 2, 32, 66, 122, 130 and 135.
 3. SECOND AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT—Filed March 30, 1936—but omitting therefrom all except typical paragraph No. 76.
 4. THIRD AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT—Filed April 11, 1936—but omitting therefrom all except typical paragraphs numbered I and II.
 5. FOURTH AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT—Filed June 9, 1936—but omitting therefrom all except sub-paragraph 5 of Paragraph I.
 6. FIFTH AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT—Filed January 5, 1937—but omitting all except the allegation that Fannie Owen Woolfolk, defendant in plaintiff's original Bill of Complaint, died testate February 18, 1936, prior to service, and that Matalea Mourning Bickel was appointed executrix of her estate on March 26, 1936, and that claim is made against said executrix.
 7. AMENDMENT TO BILL OF COMPLAINT—ordered made part of record August 2, 1939—but omitting exhibit A attached thereto except the information with respect to the estate of Addison Dimmitt, deceased.
 8. MOTION TO DISMISS—Filed April 15, 1936, by Fidelity & Columbia Trust Company, et al.—but omitting the names of the other moving defendants and setting forth only the grounds of said motion.

Plaintiff's Designation of Contents of Record on Appeal

9. SUBSTITUTED ANSWER OF KATHERINE K. ABBOTT, ADMINISTRATRIX—Filed August 30, 1938.
10. REPLY TO ANSWER OF DAVID J. ABBOTT—Filed February 16, 1937.
11. ANSWER OF WILLIAM S. SPEED, SAUNDERS P. JONES, G. A. HEUSER, EXECUTOR OF THE ESTATE OF HENRY VOGT, DECEASED, ALLEN P. DODD, ET AL.—Filed December 7, 1937 and refiled Feb. 3, 1939—but omitting all except Paragraphs III, IV and V.
12. MOTION OF DEFENDANTS PURSUANT TO EQUITY RULE 29—Filed December 7, 1937—that the court hear and determine the matters therein set out before trial.
13. OPINION OF JUDGE MAC SWINFORD—Filed May 13, 1938.
14. ORDER OVERRULING MOTIONS TO DISMISS—Entered July 12, 1938.
15. SEPARATE ANSWER, COUNTERCLAIM AND CROSS ACTION OF HENRY M. JOHNSON, ET AL.—Filed September 8, 1938.
16. AMENDED ANSWER, COUNTERCLAIM AND CROSS PETITION AND MOTION FOR SUMMARY JUDGMENT OF SUSIE E. TELLMAN ET AL—Filed November 1, 1938.
17. REPLY TO COUNTERCLAIM OF HENRY M. JOHNSON, ET AL.—Filed November 15, 1939.
18. ORDER MAKING OBJECTIONS AND EXCEPTIONS OF ONE DEFENDANT AVAILABLE TO ALL DEFENDANTS: making the response of the Defense Counsel Committee to plaintiff's request for admissions, the response of all defendants; making defendants' request upon plaintiff for admissions the request of all defendants, and plaintiff's response thereto available to all defendants; and making all pleadings and motions filed by any defendant, relating to the merits of the cause in general, inure to the benefit of all defendants—Entered October 31, 1938.

Plaintiff's Designation of Contents of Record on Appeal

19. AGREED ORDER AS TO TESTIMONY OF ALL DEFENDANTS, OTHER THAN OFFICERS, DIRECTORS OR EMPLOYEES OF THE BANK & TRUST COMPANY—Entered February 3, 1939.
20. STATEMENT AS TO SPECIAL DEFENSES.
21. FINDINGS OF FACT AND CONCLUSIONS OF LAW REQUESTED BY PLAINTIFF—Filed with the Court January 5, 1940.
22. PLAINTIFF'S MOTION TO MAKE CERTAIN SPECIFIED FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed June 5, 1940; Overruled in open court June 5, 1940.
23. OPINION OF JUDGE MAC SWINFORD—Filed March 23, 1940.
24. FINDINGS OF FACT AND CONCLUSIONS OF LAW—Entered June 29, 1940.
25. DEFENDANTS' MOTION FOR ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed June 29, 1940.
26. ORDER OVERRULING DEFENDANTS' MOTION FOR ADDITIONAL FINDINGS OF FACT—Entered June 29, 1940.
27. FINAL JUDGMENT AND DECREE—Entered June 29, 1940.
28. NOTICE OF APPEAL—Filed July 30, 1940.
29. STAY OF OPERATION AND ENFORCEMENT OF JUDGMENT—Entered July 30, 1940.
30. DESIGNATION OF PORTIONS OF RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD ON APPEAL—Filed September 30, 1940.
31. STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL—Filed September 30, 1940.
32. CONDENSED NARRATIVE STATEMENT OF THE TESTIMONY AND EVIDENCE AND CERTAIN RULINGS AND ORDERS MADE IN

Statement of Points on Which Appellant Intends to Rely

- COURSE OF TRIAL—Hearing of evidence began October 1, 1938, and concluded February 3, 1939. Filed September 30, 1940.
33. ORDER EXTENDING TIME FOR FILING AND DOCKETING RECORD—Filed Sept. 4, 1940.
 34. ORDER TRANSMITTING EXHIBITS TO CIRCUIT COURT OF APPEALS UNDER RULE 75 (i)—Filed
 35. ALL EXHIBITS FILED IN EVIDENCE.
 36. ORDER FOR PRINTING PORTIONS OF RECORD.

STATEMENT OF THE POINTS ON WHICH APPELLANT INTENDS TO RELY ON THE APPEAL.

(Filed September 30, 1940.)

Now comes the plaintiff, having taken an appeal from the judgment and decree entered in this cause on June 29, 1940, dismissing plaintiff's bill of complaint and the amendments thereto at plaintiff's costs, and states that the District Court committed error in rendering said final judgment and decree and that the points on which he intends to rely on said appeal are as follows:

1. The District Court erred in holding that the defendants are not the real, true and beneficial owners of stock of the National Bank of Kentucky in proportion to their respective stock holdings in Banco Kentucky Company, and proportionately liable for the assessment levied upon shareholders and stockholders of said National Bank.

2. The District Court erred in holding that the defendants were not estopped, by reason of their receipt of the benefits of the ownership and the control of the stock of said National Bank of Kentucky, from denying their liability to assessment as the real, true and beneficial shareholders and stockholders of said national bank.

Statement of Points on Which Appellant Intends to Rely

3. The District Court erred in holding that the organization and operation of the BancoKentucky Company did not defeat, evade and avoid the spirit and intent of public statutes of the United States, State of Kentucky and State of Delaware, designed for the protection of depositors in national and state banks and trust companies, and that this corporate entity could be interposed by defendants as an insulator or nonconductor of liability for said assessment.

4. The District Court erred in holding that BancoKentucky Company did not hold Trustees' Participation Certificates, representing stock of the National Bank of Kentucky, as the corporate convenience, instrumentality and agency of defendants.

5. The District Court erred in failing to hold that the organization and operation of BancoKentucky Company for the purpose of holding the stock of the National Bank of Kentucky and the stock of other banks and trust companies and the operation of a group or chain of banks in the Ohio Valley, without providing for the continuance or assumption of personal liability to assessment on the part of the holders of shares in said BancoKentucky Company and without provision for the satisfaction of any assessment which might be levied upon shareholders of the National Bank of Kentucky or other banks and trust companies operated and controlled through said Delaware corporation, was constructively fraudulent as to depositors and creditors of said National Bank of Kentucky and that said corporate entity should be disregarded.

6. The District Court erred in failing to hold that the directors and shareholders of the National Bank of Kentucky and of BancoKentucky Company were chargeable with the knowledge of the officers of the National Bank of Kentucky, who suggested the organization of said BancoKentucky Company and participated in its organization.

Statement of Points on Which Appellant Intends to Rely and operation, with respect to the precarious financial condition of said National Bank of Kentucky and with knowledge of their purpose to avoid or limit the personal liability to assessment of shareholders of the National Bank of Kentucky by the interposition of the corporate entity of said BancoKentucky Company between defendants and the direct ownership of the shares of said National Bank of Kentucky.

7. The District Court erred in failing to hold that defendants who exchanged Trustees' Participation Certificates for shares of BancoKentucky Company stock did not thereby terminate their statutory and contractual liability to assessment as shareholders and stockholders of the National Bank of Kentucky.

8. The District Court erred in failing to follow principles of law decided by the United States Circuit Court of Appeals for the Sixth Circuit in *Barbour v. Thomas*, 86 *Fed. 2d* 510 and *Ullrich v. Schram*, 86 *Fed. 2d* 678.

9. The District Court erred in holding applicable to this case statements appearing in the opinion of the United States Circuit Court of Appeals for the Sixth Circuit in *Atherton v. Anderson*, 86 *Fed. 2d* 518.

10. The District Court erred in approving and entering the following Findings of Fact, suggested by the defendants, numbered 4, 5, 14, 19, 21, 22, 24, 25, 26, 28, 31, 36, 37, 38, 41, 43, 44, 45, 61, 62, 63, 64, 65, 66 and 67.

11. The District Court erred in adopting the following Conclusions of Law, proposed by defendants, numbered 1, 4, 6, 7, 8, 9, 10, 11 and 12.

12. The District Court erred in failing to adopt and enter each of the Findings of Fact and Conclusions of Law suggested by plaintiff and in refusing to make each of the additional and supplemental Findings of Fact and Conclusions of Law proposed by plaintiff in accordance with the

Order Extending Time for Filing and Docketing Record

opinions of the Court filed May 13, 1938 (23 Fed. Supp. 265) and March 23, 1940.

13. The District Court erred in overruling plaintiff's objection to the introduction of evidence offered by defendants and in sustaining objections to the introduction of evidence offered by plaintiff.

14. The District Court erred in dismissing plaintiff's Bill of Complaint and the amendments thereto and in refusing to enter judgment in favor of plaintiff and against the defendants as prayed for therein.

ORDER EXTENDING TIME FOR FILING AND DOCKETING RECORD

(Entered September 4, 1940)

This day, for good cause shown, and upon the application of the plaintiff, it is ordered that the time for filing the record on appeal and docketing the above styled action in the United States Circuit Court of Appeals for the Sixth Circuit be and the same is hereby extended sixty (60) days.

ORDER EXTENDING TIME FOR FILING AND DOCKETING RECORD

(Entered by United States Circuit Court of Appeals
on October 28, 1940.)

This day, for a good cause shown and upon application of the plaintiff, it is ordered that the time for filing the record on appeal and docketing the above styled action in this Court, be and the same is hereby extended thirty days from and after October 29, 1940.

*Order for Transmission of Exhibits to Circuit Court***ORDER FOR EXTENDING TIME FOR FILING AND
DOCKETING RECORD ENTERED BY UNITED
STATES CIRCUIT COURT OF APPEALS NOVEM-
BER 14, 1940**

This day, for a good cause shown and upon application of the plaintiff, it is ordered that the time for filing the record on appeal and docketing the above styled action in this Court, be and the same is hereby extended thirty days from and after November 28, 1940.

**ORDER FOR TRANSMISSION OF EXHIBITS TO
UNITED STATES CIRCUIT COURT OF APPEALS**

(Entered October 9, 1940)

On motion of plaintiff-appellant, A. M. Anderson, receiver of the National Bank of Kentucky, upon stipulation of the undersigned counsel, and the Court being of the opinion that the original exhibits should be sent to the United States Circuit Court of Appeals in lieu of copies under Rule 75(i) of the Rules of Civil Procedure;

It is hereby ordered that the Clerk of this Court cause the original exhibits filed in evidence in this case to be transmitted to the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, and that the exhibits be returned to the Clerk of this Court upon the final determination of this cause.

ORDER FOR PRINTING PORTIONS OF RECORD

(Entered by U. S. Circuit Court of Appeals, Oct. 24, 1940.)

On motion of Appellant, A. M. Anderson, receiver of the National Bank of Kentucky, and for good cause shown, it is hereby directed that the portions of the record on appeal to be printed shall consist of the portions designated in

Notice of Appeal to the Circuit Court

Items 1 to 34 inclusive of Plaintiff's Designation of Contents of Record on Appeal, and that the original exhibits filed in evidence by the parties and made part of the record on appeal in Item 35 of said designation, to be transmitted to the Clerk of this Court, shall not be printed.

It is further ordered that the records on file with the Clerk of this Court, in *Atherton v. Anderson*, No. 7298, and in *Laurent v. Anderson*, No. 6384, be considered part of the record on this appeal in lieu of Appellees' exhibits, "Defendants' Exhibit No. 1" and "Defendants' Exhibit No. 23."

It is further ordered that the Clerk of this Court accept for filing copies of the photostatic reproductions of such exhibits as have been reproduced for the Court's use in considering this appeal.

Approved:

XEN HICKS,

Circuit Judge.

NOTICE OF APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT OF SUSIE E. TELLMAN, ET AL.

(Filed Sept. 26, 1940)

Notice is hereby given that Susie E. Tellman, Frieda Gudex, Administratrix Estate of Emily E. Bischoff, and Mary Christine Cottell, Administratrix Estate of P. A. Gaertner, deceased, hereby appeal to the United States Circuit Court of Appeals for the Sixth Circuit from so much of the Judgment and Decree entered in this action on June 29, 1940 by the Honorable Mac Swinford, District Judge, as dismissed the Counterclaim and Cross-action filed herein, and amendments thereto, by above named parties against A. M. Anderson, Receiver of the National Bank of Kentucky.

*Designation of Contents of Record on Appeal***TELLMAN, ET AL. DESIGNATION OF CONTENTS OF
RECORD ON APPEAL**

(Filed Sept. 30, 1940)

You are hereby authorized to prepare a certificate and copy of Tellman, et al. Notice of Appeal to the United States Circuit Court of Appeals for the Sixth Circuit filed on September 26, 1940, and copy of Tellman, et al. "Statement of Points on which Tellman, et al. intend to rely" filed on October 4th, 1940, and to include same with copies of papers entitled "Plaintiffs designation of points of record on appeal" filed in your Court on September 30, 1940, and copy of opening statement of Judge Robert S. Marx of date Oct. 31, 1938, all of which are to constitute the record on the appeal herein.

HENRY M. JOHNSON,

LUCIAN L. JOHNSON,

Attorneys for Tellman, et al.

Service of copy of above Designation acknowledged this 9th day of Oct. 1940.

NICHOLS, WOOD, MARX & GINTER,

*Attys. for A. M. ANDERSON, Rec.***STATEMENT OF POINTS ON WHICH APPELLANTS,
TELLMAN, ET AL. INTEND TO RELY**

(Filed Oct. 4, 1940)

Now comes Susie E. Tellman, Frieda Gudex, Administratrix Estate of Emily E. Bischoff, and Mary Christine Cottell, Administratrix Estate of P. A. Gaertner, deceased, having taken an appeal from a portion of the judgment entered in this cause on June 29, 1940, dismissing their Counterclaim and Cross-action filed herein, and amendments thereto, and state that the District Court committed error in entering final judgment dismissing their Counter-

Statement of Points on Which Appellants Intend to Rely
claim and Cross-action herein, and that the points on which Tellman, et al. intend to rely on said appeal are as follows:

In the event on appeal the United States Circuit Court of Appeals for the Sixth Circuit should reverse this case, and hold, as A. M. Anderson, Receiver of the National Bank of Kentucky contends, in his statement of Points on which said Receiver intends to rely on appeal, namely, that the organization and operation of Banco Kentucky "was constructively fraudulent as to depositors and creditors of the said National Bank of Kentucky, and that said corporate entity should be disregarded," then the Court should hold that the said Corporation's organization and operation and sale of stock to innocent stockholders, such as Tellman, et al. was fraudulent, so as to ground a Cross-action and Counterclaim, in favor of Tellman and others of such innocent purchasers of stock in Banco, against the assets of the National Bank of Kentucky in the hands of A. M. Anderson, Receiver of the National Bank of Kentucky, for the amount they lost in purchasing the said fraudulent Banco stock.

*Clerk's Certificate***CLERK'S CERTIFICATE**

United States of America, }
Western District of Kentucky. } ss:

I, W. T. Beckham, Clerk of the District Court of the United States, for the Western District of Kentucky, do hereby certify that the foregoing volume consisting of 297 pages, together with the two volumes of evidence consisting of 306 and 309 pages respectively, constitutes a true and complete transcript of the record and proceedings in said court upon the trial in the case of A. M. Anderson, Receiver of the National Bank of Kentucky v. Katherine Kirkpatrick Abbott and others as the same appears of record and on file in my said office.

Witness my hand and the official seal of said court this
..... day of December, 1940.

.....
*Clerk of the United States District
Court, for the Western District of
Kentucky.*